ACQUISITION ADVISORY PANEL
Meeting Minutes
September 27, 2005
The Auditorium, Federal Deposit Insurance Corporation
Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its eleventh meeting on September 27, 2005 in the auditorium at the Federal Deposit Insurance Corporation (FDIC), Washington D.C. Ms. Marcia Madsen, Chair of the AAP, opened the meeting at approximately 09:05 AM.

The Chair welcomed everyone to the meeting and stated that the day's agenda included presentations by speakers in the morning, and the afternoon session would be dedicated to status reports from each of the Panel's six Working Group Chairs. Ms. Madsen noted a minor change to the agenda – Panel Member Thomas Luedtke would brief on the status of his Inherently Governmental Working Group later in the morning instead of in the afternoon.

The guest speakers and their affiliations were as follows:

Presenter	Affiliation	Attachment
Mr. Thomas Reynolds	Private Citizen – see Public Statement	Attachment 1
Mr. W. Frederick Thompson	The Council for Excellence in Government	Attachment 2
Mr. Daniel A. Masur	Speaking as Private Citizen [Mayer, Brown, Rowe and Maw]	Attachment 3
Mr. Ronald Poussard	Combat & Mission Support, U.S. Air Force	Attachment 4
Mr. Mark Toteff	Traverse Bay Manufacturing	Attachment 5

The Chair briefly reviewed the schedule and dates for upcoming Panel meetings and explained that the next Panel meeting scheduled for October 14th would be administrative in nature. The next Panel meeting open to the public would be scheduled for October 27th at the FDIC Auditorium in Washington, D.C.

Ms. Madsen turned the meeting over to the Designated Federal Officer (DFO), Ms Laura Auletta, who, in turn, called the roll. The following Panel members were present:

Dr. Allan V. Burman
Mr. Carl DeMaio
Mr. David A. Drabkin
Mr. Jonathan Lewis Etherton
Mr. James A. (Ty) Hughes, Jr.
Mr. David A. Javdan (arrived late: 9:15 AM)
Mr. Thomas Luedtke
Ms. Marcia G. Madsen
Mr. Joshua I. Schwartz
Mr. Roger D. Waldron

The following Panel members were not in attendance:

Mr. Frank J. Anderson, Jr.
Ms. Deidre A. Lee

The Chair discussed recent events related to alleged procurement integrity and ethics violations occurring in the aftermath of Hurricane Katrina and the potential impact on the AAP's charter. Ms. Madsen stated that if the Panel Working Groups believe there are linkages between their issues and the Katrina disaster recovery, they should be addressed at the Working Group level. She stated, however, that the Panel would not be establishing a separate Working Group focusing on disasters, nor conduct Katrina hearings. The Chair stated that there have been various issues associated with ethics that have developed during the period the Panel has been meeting, but 10 U.S.C. provisions would not be specifically addressed by the Panel. She said, however, as an on-going effort, each Working Group should identify any vulnerabilities to ethics abuse and potential implications.

The Chair introduced the first guest speaker, Mr. Thomas Reynolds who was invited to speak to the Panel to elaborate on his written public comment (Attachment 1) he had previously submitted to the Panel (June 6, 2005). Mr. Reynolds thanked the Chair for the invitation to speak. He explained that while he is currently a Government employee with over 32 years of experience in contracting at both the Department of Defense (DoD) and civilian organizations, his presentation to the Panel was being made as a private citizen. Mr. Reynolds raised concerns in his testimony regarding the challenges facing the acquisition workforce in the current environment to include: overregulation; declining resources and budgets; increasingly complex workload; lack of both training and readily available lessons-learned; an over-emphasis on operating to "*protest-proof*" source selection files to avoid second-guessing; unrealistic expectations for converting requirements into performance-based services acquisition (PBSA) statements of objectives; questionable value of past performance surveys; and, continuous changes in procurement regulations, laws and federal initiatives of which the workforce is hard pressed to keep abreast. He noted that the current need for "speedy awards" may have resulted in contract abuses such as Abu Ghraib.

Mr. Reynolds provided several recommendations to the Panel to include: 1) rehiring federal retirees as annuitants to assist in on-the-job training of newly hired contracting professionals; 2) creating a single acquisition career development standard and Acquisition Certification Program for all federal agencies; 3) limiting the ability of companies to protest on procedural grounds; 4) removing contracting functions from being under organizational control of personnel with mission responsibilities; 5) revisiting the 40% performance-based services acquisition goal; and, 6) establishing a dual grade structure for both management and "acquisition experts." Mr. Reynolds also addressed the overuse of time and materials (T&M) contracts and emphasized that, if necessary, the Government should consider using more cost-type contracts for commercial services when requirements are not well defined, despite the fact that administration of cost contracts is labor intensive. Mr. Reynolds entertained questions from Panel members.

In response to several questions from Panel Member Carl DeMaio on ethics, Mr. Reynolds elaborated on previous comments. He stated that acquisition reforms have given more discretion to a greater number of people, and that a dishonest person could take advantage of this latitude. He added that organizational changes that allow finance, contracting and receiving functions to be located all within a single organization can lead to problems. Mr. DeMaio asked which was better for the taxpayer - the new discretions allowed by acquisition reform to contracting professionals, or

the old rulebook with less discretion? Mr. Reynolds responded that a balance is necessary between rules and discretion, and that he has concerns that with many experienced professionals retiring, the experience necessary for making good business decisions is less available. In response to a suggestion from Mr. DeMaio that better public integrity standards and training are necessary, Mr. Reynolds stated that he believes that the acquisition community already knows what the integrity rules are.

Panel Member Joshua Schwartz asked Mr. Reynolds what steps need to be taken to ensure that abuses resulting from a more flexible acquisition system are minimized. Mr. Reynolds explained that he believes there is no perfect solution, and that going back to rigid rules is undesirable; he noted that second guessing decisions made by contracting professionals under the more current relaxed rules is also a problem. Panel Chair Marcia Madsen suggested that Mr. Reynolds provide written follow-up recommendations to the Panel on achieving and retaining a balance.

In response to a question from Panel Member Ty Hughes, Mr. Reynolds stated that the two most critical issues today for acquisition professionals relate to training and staffing. He noted that at his home station, the effort to carve out small business procurements from larger prime contracts is causing additional workforce pressures. He added that training requirements for contracting professionals should include more training on contract cost and pricing. Panel Member Al Burman asked Mr. Reynolds to elaborate on the appropriate time to use a PBSA approach to satisfy requirements. Mr. Reynolds responded that PBSA is appropriate when the final outcome is measurable, but not appropriate for advisory consulting services. He added that in the current environment, there is an expectation that every requirement be translated into a PBSA requirement.

Panel Member Marshall Doke asked Mr. Reynolds to comment on the need for contracting officers to "*protest-proof*" the contract file, and the root of his concerns. Mr. Reynolds responded that there is a tendency for second guessing decisions particularly when "*dumb comments*" made by technical evaluators are in the file even though resolution of these comments is made during evaluation team consensus. He said that because work papers must be made part of the official file, the response has been to avoid developing work papers. Mr. Reynolds said that GAO's approach to reviewing is inconsistent, and that staffing shortfalls make it difficult for contracting professionals to maintain currency on new regulations. Mr. Doke asked whether Mr. Reynolds was aware that the GAO standard of review, which gives great deference to agency conduct as reasonable. In response to Panel Member Jonathan Etherton's request to elaborate on his comments on T&M contracts in previously submitted written public comment, Mr. Reynolds responded that this type of contracting is "*the absolute worst form of contract*," but that they are increasingly being used because they can be awarded quickly and are easy to both administer and close out. He explained that, because the contractor is paid for every hour worked, the contractor has no incentive to work quickly. He believes that, in situations where the work effort is unknown, a cost reimbursable contract vehicle is preferable to T&M. In response to Mr. Etherton's request for suggestions on ways to avoid T&M abuses, Mr. Reynolds described a modified T&M approach where fee is segregated from the labor rate, thus serving to remove the contractor's incentive to slow the work effort. He also suggested that, to avoid contractor over-recovery of indirect costs, both a straight T&M labor rate as well as an overtime T&M labor rate be developed and utilized as appropriate.

Panel Member Lou Addeo asked Mr. Reynolds how many contracting professionals are necessary to staff an office, and if he had benchmarks or factors that should be considered when right-sizing the acquisition workforce. Mr. Reynolds responded that the answer is dependent on the complexity

and variety of the workload, and because it is difficult to project future work, determining the correct size of the workforce is also difficult. In response to comments from Panel Member Jonathan Etherton, Mr. Reynolds agreed that there is additional pressure to award PBSAs at the end of the fiscal year to satisfy the Government quota. Mr. Reynolds responded to follow-up questions on the use of T&M vehicles from Panel Member Ty Hughes by explaining that while not inherently bad, the T&M approach can be misused and allows for overcharging of the Government through both inflated hours and labor rates.

The Chair thanked Mr. Reynolds for his insightful comments and recommendations.

The Panel Chair, Ms. Madsen, introduced the second speaker, Mr. W. Frederick Thompson, Vice President, Management and Technology, The Council for Excellence in Government. Mr. Thompson thanked the Panel for the invitation to speak and encouraged comments and questions throughout his presentation. Mr. Thompson provided a short overview of the Council for Excellence in Government explaining that the Council is a non-profit, non-partisan organization working to improve the performance of Government at all levels. Mr. Thompson has held several technical and contracting positions in both Government and industry, including UNISYS, the Internal Revenue System, Department of Treasury, and the Office of Personnel Management.

Mr. Thompson provided the following recommendations in both his prepared written statement (Attachment 2) and brief summary remarks on ways to achieve better results through PBSA, an approach he feels is beneficial from the perspectives of Government and industry:

- Government buyers should be highly knowledgeable about both the technologies and commercial business practices of industry.
- The Government should use PBSA cautiously when it possesses the expertise and has a profound interest in the manner in which the work is to be performed.
- The Government should reduce the ambiguity of its performance work statements.
- The desired result of a PBSA needs to be more clearly articulated.
- The buyer should be the user. The contracting officer awarding the contract should also be the contracting officer involved in administration of the contract and delivering the result.
- The Contracting Officer Technical Representative (COTR) (or Contracting Officer Representative (COR)) should assume a reduced role.

Mr. Thompson suggested three principles for improving Government contracting: Government should seek to reduce the overall cost of competition, reduce the time required to run a competitive procurement, and place more emphasis on normal commercial practices. Mr. Thompson opened the floor for questions from Panel members.

In response to questions regarding private sector opinions on PBSA from Panel Member Al Burman, Mr. Thompson explained that *"...there is both a great attraction of the concept and somewhat of a fear of how it operates in practice."* Industry appreciates that it has the flexibility to satisfy the requirement as it sees fit, but it has concerns that there are those in Government who want to manage requirements as they have traditionally. He said contractors struggle with how to handle unstated Government assumptions in requests for proposals. Mr. Thompson then contrasted differing contracting officer philosophies. He said that there are those that focus on the process and

the rulebook, and those, usually more experienced and frequently with DoD backgrounds, who view themselves as the program manager's advocate.

Noting that he believes that a COR has a reduced role in the PBSA post-award phase, and an expanded pre-award role, Panel Member Carl DeMaio asked Mr. Thompson to elaborate on the role of the COR in a PBSA award. Mr. Thompson replied that day-to-day monitoring of tasks such as staffing levels and individual employee performance should be minimized. He added that contracting officers and CORs must work together more closely, but this is difficult in a scenario where the contracting officer is at GSA and the technical COR is at another agency. He recommended that the contracting officer assume an expanded role – to be the "*governor of the system*," oversee the COR more closely, and monitor performance. Panel Member Joshua Schwartz alluded to Mr. Thompson's recommendations to establish centers of acquisition excellence and require contracting professionals to have expertise in the service or commodity being procured, and asked him to elaborate. Mr. Thompson replied that in the DoD, active duty military experts are assigned to acquisition positions to lend their extensive technical expertise, and the FAA utilizes independent technical experts to provide expertise on radar systems. He said that while contracting out technical expertise is not inexpensive, and conflict-of-interest issues must be avoided, it is useful and appropriate to contract for technical expertise in supporting acquisitions.

Suggesting that vagueness in a solicitation may lead to post award constructive changes when the contractor's proposal does not explicitly outline all assumptions, Panel Member Ty Hughes asked Mr. Thompson to comment further on the manner in which contractors approach proposal assumptions in a PBSA environment. Mr. Thompson replied that an award should not be based on documentation of assumptions, and suggested that following a question and answer session, the Government should consider disseminating a set of assumptions to all contractors.

Panel Member Jonathan Etherton asked Mr. Thompson for his insights on how to get from the current acquisition environment to the ideal state he had expressed in his statement (Attachment 2) and comments. Mr. Thompson replied that when contemplating reforms, the Government's objective of getting the best product at the best price must be maintained, and a more rules-based approach may not be the optimum way to proceed.

The Chair thanked Mr. Thompson for his insightful presentation and the time taken to address the Panel.

Upon returning from a short break, Acting Panel Chair Jonathan Etherton introduced the next Panel presenter, Mr. Daniel A. Masur, Partner in the Information Technology (IT) and Outsourcing practice of Mayer, Brown, Rowe & Maw. Panel Chair Marcia Madsen was not in attendance during Mr. Masur's presentation. Mr. Masur thanked the Panel for the invitation to speak, noting that his presentation (Attachment 3) was being made as a private citizen, not as a Partner of the firm. Mr. Masur began his presentation by explaining that while business process outsourcing is rapidly expanding, there is significant anxiety and perceived risk because the "*tools are being built, the service delivery models and service centers are being built,*" which has created price risk aversion. He discussed the fundamental purposes of IT and business process outsourcing contracts to include the importance of addressing all known and foreseeable issues, providing a workable framework to manage relationships, addressing future change and disputes resolutions, and establishing all business terms (legal, financial, and operational responsibility and risk.) He remarked that contracts must be crafted to provide customers with tools to retain leverage and manage change, monitor and

manage service quality, provide competitive pricing protection, and manage potential liability and risk without impacting price. Mr. Masur outlined eight keys to successful customer/supplier relationships to embrace: alignment of interests, maintaining bartering rights, establishing options in dealing with suppliers, ensuring inclusion of advance approval of changes so there are "*no surprises,*" maintaining sufficient customer control, retaining post-award customer competitive leverage, ensuring visibility into supplier performance, and providing for governance and escalation of problems and issues. He explained that a positive relationship where both the customer and supplier are attuned to good feedback and past performance recommendations results in mutually beneficial arrangements; translates into a customer being treated well and a supplier who is incentivized to perform well to facilitate award of future business.

Mr. Masur introduced alternative pricing structure concepts including gain-sharing, percentage of savings and/or percentage of revenue, cost–plus (with risk/reward sharing) and value pricing. Other pricing related strategies discussed were benchmarking, most favored customer and establishment of the right to in-source or use third parties for both in-scope and new services. Mr. Masur recommended that the initial term of the contractual relationship be five, seven, or ten years, noting that business process outsourcing arrangements tend to be of a shorter duration than for IT outsourcing. He concluded his presentation with a discussion of exit rights and limitations of liability, stating that duration of a liability cap is typically twelve months, but there are important exceptions when gross negligence, indemnification claims, refusal to perform, or breaches of representations and warranties occur. Mr. Masur entertained questions from Panel members.

Acting Panel Chair Jonathan Etherton asked Mr. Masur to provide examples of lessons-learned gained through his experiences in the last five to six years. Mr. Masur explained that there are particular issues with business process outsourcing that are different from outsourcing of IT. For example, he said, outsourcing of IT does not carry with it many complications associated with legal compliance. Business process outsourcing, to include outsourcing of finance, accounting and human resource (HR) services, has many more legal compliance issues which impact risk assumption that must addressed. He next addressed the issue of intellectual property, saying that for IT, if software is developed under a contractual arrangement, it is owned by the customer, not the supplier; but this is not necessarily the case when outsourcing business processes.

Panel Member Joshua Schwartz asked Mr. Masur to elaborate on the nature of his practice and whether he has represented both suppliers and customers during his career. Mr. Masur replied that prior to 1997 he represented suppliers, and thereafter he has represented only corporate customers. He said that having worked on both sides of the relationship has enabled him to develop solutions and compromises that are agreeable to both parties. Professor Schwartz commented that the Government would benefit from having lawyers who have experience on both sides.

Panel Member Ty Hughes asked Mr. Masur to discuss what strategies a customer in a non-competitive environment can use to ensure that a fair and reasonable price is reached. Mr. Masur replied that, without exception, no detailed cost input is requested or received from a supplier. However, the customer's business case includes extensive information on costs associated with providing the same services being solicited from the supplier. Additionally, the firm has benchmark cost information available to provide additional perspective. Mr. Masur stated that it is important not to get involved in supplier cost data because it gives the supplier the freedom to be more creative in providing the best solution and pricing as well as allowing the customer to avoid becoming responsible for errors in cost build-ups that would have otherwise resulted in higher costs.

In response to a follow-up question from Mr. Hughes, Mr. Masur explained that, for business process re-engineering, the supplier's staffing model and location are known and understood. Having the full time equivalents (FTEs) being proposed allows the customer insight into cost differentials between companies, and allows a better understanding of risk being assumed.

Panel Member David Drabkin asked Mr. Masur to address how the private sector handles pricing for three different service scenarios: services with a defined outcome, services by the hour where the individual is essentially an employee, and a hybrid of the two. Mr. Masur explained that, for well-defined services, they establish a "resource base line" for each service that covers all cost drivers and is relatively easy to adjust up or down. For some services, which he referred to as "*projects*," both large and small, it is difficult to anticipate costs. He said that projects are the only area where FTE-pricing is appropriate.

Panel Member Al Burman asked Mr. Masur to provide more detail on the customer, their place in the organization, and staffing levels. Mr. Masur explained that the answer depends on the nature of the work. He said that for IT services, the customer is the Chief Information Officer (CIO) with support from the legal department. He contrasted this to business process outsourcing (BPO) where the customer is designated by the owner of the business process. Mr. Masur said that the level within the organization is dependent upon the project and nature of the work. He added that a recent positive trend has been that companies are establishing internal organizations solely dedicated to strategic outsourcing of the full range of functional areas. Dr. Burman asked if these new organizations typically have ready access to corporate senior leadership. Mr. Masur replied that often the strategic outsourcing lead is a peer of the CIO, HR Vice President, or the controller. In response to a question from Panel Member Lou Addeo, Mr. Masur said that laws and regulations are not set up to allow the types of services offered by his firm in the area of outsourcing of business functions to be utilized by the federal, state and local governments.

Mr. Etherton thanked Mr. Masur for his excellent presentation to the Panel.

The Panel Chair returned and introduced Panel Member Thomas Luedtke, Chair of the Inherently Governmental Working Group, who provided a status report on the Group's development of its report background section. Mr. Luedtke explained that the Working Group chose to focus on regulations, and Inspectors General (IG) and Government Accountability Office (GAO) reports. He identified four questions that the Working Group was considering:

- "*Are contractors performing work that, in essence, is of such a nature that it ought to be done by civil servants*?"
- Does the Government *"have such a reliance on contractors in various areas that we have lost the ability in-house to make decisions in terms of what's commonly known as the smart buyer?"*
- Does the definition of inherently governmental need to be better defined since it appears to mean different things to different people in different situations?
- When contractor personnel are functioning in Government workspace, are there issues associated with conflicts of interest and confidentiality that should to be addressed because the contractor personnel's firms may be potential bidders on mission related procurements?

The Panel Chair thanked Mr. Luedtke for his report and for taking on a difficult subject. She encouraged members of the other Working Groups to communicate their ideas on the issues to Mr. Luedtke.

The Panel Chair introduced the next speaker, Mr. Ronald Poussard, Program Executive Officer for Combat and Mission Support (AFPEO/CM), United States Air Force (USAF). Ms. Madsen thanked Mr. Poussard for his patience and understanding in the adjustment of the morning's agenda. She requested that he include in his discussion his role in overseeing and managing services procured off of interagency contract vehicles. Mr. Poussard thanked the Panel for the opportunity to speak, and welcomed comments and questions throughout his presentation (Attachment 4). He provided background on the mission and history of his organization, established in February 2002 in response to the Fiscal Year (FY) '02 National Defense Authorization Act (NDAA) requirement for DoD to manage services in a manner similar to products. The organization's responsibilities include cognizance over all USAF service acquisitions valued between $100M and $500M, and involve managing the entire solicitation pre- and post-award process. Mr. Poussard explained that this enables a strategic view across USAF commands. Currently, the organization manages 139 USAF programs estimated at a total ceiling value of $109B covering a full range of services to include Sustainment & Mission Support, IT Operations & Services, Base Operations Support, A-76 Public/Private, Training Support & Services, Operations/Base Level Maintenance, and Contingency Operations.

Mr. Poussard discussed the challenges in the current environment of managing dynamic and complex services acquisitions. He explained that the USAF has instituted a more robust review process throughout the entire life-cycle of an acquisition to ensure regulatory and statutory compliance, and the USAF is working with the Office of the Secretary of Defense (OSD) to establish a review of AFPEO/CM's top twenty services programs. He observed that monitoring cost, schedule and performance on a services contract is distinctly different from monitoring them on a contract where the deliverable is a product. Especially challenging is measuring cost on a multiple award indefinite delivery/indefinite quantity (IDIQ) services contract when uncertainties exist as to the number of orders that will be placed and/or when contingencies are unable to be anticipated. Mr. Poussard stated that they have not yet been able to establish a standard set of metrics applicable across all types of services for use in PBSA.

Mr. Poussard explained that the USAF is watching a FY 2006 legislative proposal that would consolidate acquisition of services within and across DoD by establishing contract support centers. He explained that the current consolidation of services throughout the Air Force provides for greater efficiencies, but it also has resulted in a level of complexity and challenges many local acquisition professionals had not previously experienced. Mr. Poussard then observed that DoD is bringing more IDIQ assisted and non-assisted acquisitions in-house rather than using non-DoD vehicles, and he has concerns about the adequacy and availability of resources and personnel to handle the increased workload.

Mr. Poussard stated that within DoD, program managers and quality assurance specialists do not receive training in the management of service requirements and contracts, and that, traditionally, contracting professionals have been relied upon to provide contract management and oversight. He recommended that the training of program managers of services be upgraded to reflect recognition that services acquisitions are of critical importance to the mission. Mr. Poussard next contrasted incentives for services acquisition to that of product-based weapons systems, explaining that for

complex incentives for services, organizations must be mindful of the in-house expertise needed to effectively manage the processes. He does not believe this expertise is resident at the field level at this time.

Mr. Poussard discussed the reservation of Air Force services requirements for small businesses in a full and open acquisition, noting that in many cases small, aggressive and innovative companies are beating large businesses and incumbents, and executing requirements very well. He said that an issue worth exploring relative to small businesses and competitive fairness is the ability for a business to retain characterization as small long after it graduates or merges with a large company on multiple award contracts with very long performance periods. He asked if, on very large requirements involving multiple-award contracts, organizations should be required to set them aside exclusively for small business in accordance with the "*rule of two.*" Mr. Poussard entertained questions from Panel members.

In response to questions from Panel Chair Marcia Madsen, Mr. Poussard explained that new Air Force interagency services contracts being contemplated must be reviewed and approved by the AFPEO/CM, which, in turn, decides if/who will make the award and manage the contract. Existing Air Force interagency vehicles are managed at the local level. Visibility is difficult because a viable data system to collect full range of pertinent data is lacking.

Panel Member Jonathan Etherton asked Mr. Poussard to elaborate on earlier comments made regarding NDAA Section 803 requirements, particularly deficiencies in current guidance. Mr. Poussard answered with a question, asking how, within the context of Section 803, should the Government bring small businesses into the mix when there are many capable large firms? He said that some small businesses invest significant amounts of money establishing the basic contract, but then receive no task order awards; Section 803 does not allow a small business set-aside because it requires fair opportunity to all entities, large and small.

Panel Member David Javdan thanked Mr. Poussard for focusing attention in his presentation on issues relating to small business. Mr. Javdan asked Mr. Poussard to comment on benefits, other than administration of a single contract, of bundling requirements. Mr. Poussard explained that at the field level, bundling "*becomes an efficiency argument,*" noting that providing adequate personnel to manage and oversee large numbers of contracts is a challenge. He suggested that the Government needs to devise ways to carve out requirements and structure contracts to enhance small business participation. He added that contract bundling and consolidation requests must be fully justified and reviewed by the AFPEO/CM before approval is given. Mr. Poussard agreed with Mr. Javdan's comment that small businesses may be able to provide lower contract costs on pieces of a larger requirement, adding that each situation is unique.

In response to a question from Panel Member Al Burman in the area of PBSA, Mr. Poussard explained that field activities develop and submit performance work statements (PWSs), service delivery summaries, and metrics for measuring successful performance to the AFPEO/CM for review and approval. He suggested that not all requirements lend themselves to PBSA, including security, safety and environmental requirements, and that during review of a field organization's package, the AFPEO/CM may carve these types of requirements out as suitable for a traditional, more prescriptive statement of work.

Panel Member Joshua Schwartz summarized some of Mr. Poussard's earlier comments relating to increased complexity and acquisition workforce staffing challenges, and asked Mr. Poussard for his personal view on the adequacy of the workforce within the USAF. Mr. Poussard responded that the workforce is "*tremendously qualified for what they have been trained to do,*" adding that retirement of experienced professionals is causing loss of capability. He said that the weapons systems community has a lot of trained and talented acquisition professionals, but that, at the base level, there has been a need to provide "just-in-time training" for the increasingly complex base level requirements that are emerging. He said that many of the field personnel are "*just incredibly hungry and capable to take these tasks and are doing a super job at it.*" He suggested that training be more aggressive to respond to the increasingly complex nature of acquisition in the field. When asked by Professor Schwartz about increasing the size of the workforce, Mr. Poussard replied that a valid argument could be made for more people in the acquisition workforce.

Commenting that creating strategic centers to handle acquisitions may be beneficial, Panel Chair Marcia Madsen asked Mr. Poussard to comment on her sense that the USAF's was taking requirements to the field instead of bringing them in. Mr. Poussard stated that the Air Force has acquisition advisory assistance programs at various locations that must present their acquisition strategies to the AFPEO/CM. This enables the AFPEO/CM to provide a common perspective, impose commonalities of strategy and contract structure, and share lessons learned. He provided an example of USAF range requirements where range customers came together to share common issues and problems. In response to Ms. Madsen's question regarding the feasibility of USAF strategic sourcing for some areas of services, Mr. Poussard said that while possible, the very large size of some of the requirements at the local level makes it difficult to contemplate even larger requirements at the Air Command level.

Panel Member Marshall Doke asked Mr. Poussard to comment on the efficiencies achieved by consolidating requirements, specifically if cost savings are being achieved. Mr. Poussard said that in the area of services, he does not personally believe that consolidation of services requirements leads to the efficiencies seen when commodities are consolidated. In response to a follow-up question from Mr. Doke, Mr. Poussard stated that while he has not seen published studies on the issue, when services are consolidated, management and oversight of these services are not necessarily more efficient.

The Panel Chair thanked Mr. Poussard for his presentation and suggested that some of the Panel Working Groups may request additional insight from him. Ms. Madsen recessed the meeting for lunch at approximately 12.45PM and reconvened it at 1:30 PM.

The Chair introduced the final invited speaker, Mr. Mark Toteff, President, Traverse Bay Manufacturing, Inc., who presented an oral public comment (Attachment 5). Mr. Toteff thanked the Panel for the opportunity to present his remarks. Mr. Toteff provided a brief overview of his company, a small apparel manufacturing company located in northern Michigan. Mr. Toteff explained that, after a down-turn in business after September 11, 2001, his company sought and won subcontracting opportunities producing garments for the military, resulting in the growth of the company from 30 to 100 employees within a year's time. Recently, and concurrent with notification that the company could no longer participate as a subcontractor to its previous prime, the company began seeking opportunities to compete as a prime for Government contracts. He voiced serious concerns about the Javits-Wagner-O'Day (JWOD) Act, specifically attributing the company's inability to compete on solicitations to the Act. He said that rules and regulations

preclude them from participating in any capacity, prime or subcontractor. Mr. Toteff provided recommendations to better enable small businesses to participate in contracts awarded under JWOD. He said that, in order for apparel manufacturers classified as small businesses to survive, the process of determining solicitation set-asides needs to be evaluated to create more bidding opportunities. Mr. Toteff opened up the floor to questions from the Panel.

Panel Member David Javdan thanked Mr. Toteff for his remarks, and noted that Traverse Bay is an example of small manufacturers in the United States who are struggling to survive, saying that Traverse Bay is unable to compete for Government prime or subcontracting awards because it does not meet JWOD eligibility requirements for award consideration. In response to a question from Panel Chair Marcia Madsen, Mr. Toteff stated that, in the apparel business where hand-eye coordination is critical, the requirement to ensure that 75% of employees are either physically or mentally disabled to be eligible for JWOD award consideration is difficult to meet. Mr. Javdan stated that the Panel's Small Business Working Group has discussed the various competing small business preference programs that in some instances have completely precluded small business from competing at all.

The Chair thanked Mr. Toteff and his staff for addressing the Panel. Ms. Madsen stated that the remainder of the meeting would be dedicated to progress reports from five (5) Working Groups. She requested that each of the Working Groups be prepared to post its draft report's Parts I & II by October 15th.

Status reports began with the Commercial Practices Working Group, presented by the Group's Co-Chair, Ty Hughes. He explained that the Working Group had distilled the issues the group would explore to include:

- Adequacy of the definition of commercial item (*"Is the fundamental premise that a commercial item has an efficient market operating out there, working?");*
- Ways to improve competition on commercial items and services;
- Pricing mechanisms for services in sole source commercial situations where no efficient market is setting prices to enable determination of fair and reasonable prices; and
- Development of a relatively neutral set of standard commercial terms and conditions that no offeror would be expected to deviate from.

Panel Member Marshall Doke introduced an issue the Commercial Practices Working Group was considering, an issue currently explained in detail and posted to the AAP website. Mr. Doke explained that the Supreme Court has consistently ruled that when not acting as a sovereign, the federal Government *"is bound by the same rules as others in the commercial marketplace,"* but that lower courts have deviated from this position. He said that, presumptions, such as regularity and good faith, should be applicable to both parties in a dispute, the Government and the contractor. Mr. Doke would like the Panel to recommend legislative changes *"in order for the courts to know once and for all that that's the rule that should be applied, the commercial marketplace...applies to both parties"* except when specia. Government protection is already granted by statute or when protection is written into contracts in a contract clause. Panel Member Joshua Schwartz stated that he has reservations about Mr. Doke's proposal and its applicability to all Government contracts, not just those for commercial items. Panel Member Ty Hughes stated that the Working Group had not reached consensus on Mr. Doke's proposal.

The next Working Group to provide a status report to the full Panel membership was Interagency Contracting. Noting that the Interagency Contracting Working Group has met fifteen times since inception, the Group's Co-Chair, Jonathan Etherton, explained that the issues surrounding interagency contracting are very complex and have been studied for ten to fifteen years. He stressed two issues before discussing the nature of the Working Group's review; first, limitations on resources must be considered in the recommendations, and second, the perspective of all stakeholders must be considered - none is *privileged*. Mr. Etherton explained that the background section of the Group's report, already posted to the AAP website, describes the "*complex landscape*" including vehicles governed by the Economy Act to those (i.e., GWACs and supply schedules) governed by specific authorities. He said that the Working Group's issues fall into two major categories. The first he called, "*establishment and continuation*;" the second, the area of competition. He also said that a significant problem encountered by the Working Group has been the inability to review information on multi-agency contracts because no central database exists. He indicated that the Working Group would also include in its review the subject of enterprise-wide contract vehicles that agencies are creating for mandatory use within the agency. Other areas of review will include pricing of base contracts and task orders, the methodology for choosing a vehicle for use, and specific topic areas ripe for developing training initiatives.

Panel Member Joshua Schwartz provided the status briefing for the Acquisition Workforce Working Group. He explained that the Working Group's recommendations are particularly important because the ability to implement the recommendations the other Working Groups develop is dependent upon availability of resources. Professor Schwartz explained that the Working Group drew on a variety of sources including public testimony to the Panel from both the private and pubic sectors, particularly those that shed light on private sector acquisition best practices and the resources necessary to implement them. The Group also drew on the experience of its members, as well as that of the Panel as a whole. He said that defining who the workforce is and identifying workforce trends is important. Professor Schwartz then identified the Working Group's issues through a series of questions:

- "*Is the existing federal Government acquisition workforce sufficient in its competencies, its qualitative strength, to do the jobs that it needs to do to assure that we are able to efficiently, effectively, and lawfully procure – run the federal procurement system and achieve mission support for the client agencies*?"
- Has staffing been adjusted to reflect the changes in the procurement system that have been made since the 1990s?
- What tasks and associated skills should be anticipated for the future to ensure the workforce is prepared?
- Are the correct sets of recruiting, personnel system career ladders, incentives, pay schemes, management and training systems in place?
- Is the appropriate data on the workforce being collected?
- Are there *burning* ethics questions that should be addressed?

Panel Member David Drabkin stated that the cost of acquisition includes people, training, and dollars, and that the Panel should be mindful of the budget and budget process. Panel Chair Marcia Madsen agreed, and referred to a previous statement from Panel Member Jonathan Etherton, that "*there's no free lunch.*" Professor Schwartz suggested that there is a cost to *not* addressing the

problems identified; expressing his personal opinion that the Federal Emergency Management Agency's response to Hurricane Katrina should have included use of task order contracts. Panel Member Ty Hughes added that, based on the public testimony, and IG and GAO reports, many identified problems stem from the inadequacy of the workforce. He said that *workforce* can be viewed both qualitatively and in terms of how many people are available to work contracts. He suggested that the reasons for the Government's adoption of commercial practices include that *"it's a relief valve for the inadequacy of the workforce structure."* Professor Schwartz agreed, adding that *"failure to properly do performance-based service contracting when you ought to ... has a lot to do with an overtaxed and inadequate workforce."* Panel Members Marshall Doke and David Drabkin made the point that the acquisition workforce tends to be looked at as being composed of contracting professionals and not the wider community. Mr. Drabkin said that the program management function needs to be addressed in the Panel's recommendations, and the governmentwide definition of the acquisition workforce is being considered for expansion to include others in the acquisition process. Panel Chair Marcia Madsen asked that the Acquisition Workforce Working Group consider the implications of strategic sourcing on the workforce.

Panel Member Al Burman reinforced earlier points by explaining that, within DoD, the acquisition workforce includes contracting and program management personnel, and individuals defining requirements, and this inclusiveness of functions better defines the workforce. Panel Member Marshall Doke recommended that those writing specifications and statements of work be recognized in a separate functional specialty.

Panel Member David Javdan provided the status briefing for the Small Business Working Group. He noted that while there are many issues relating to small business, the Working Group's goal is to focus on those areas where consensus can be reached on issues that can effect real change in Government contracting. He provided SBA Office of Advocacy statistics reflecting the role small businesses play in the American economy to include the fact that 99.7% of all employers are small businesses that employ 50% of private sector employees. Mr. Javdan said the Working Group organized the issues around the three phases of acquisition: acquisition planning, competition for award, and post-award compliance. The Working Group's issues presented to the Panel were:

- Extent to which acquisitions are structured for small businesses to receive contract awards as primes, which involves the subjects of contract bundling and guidance to contracting professionals on small business contracting mechanisms;
- A review of the practice of cascading procurements;
- Small business reserves in the context of full and open multiple contract awards where task orders must be competed with large businesses;
- Small business competition on interagency contract vehicles and discretion to target small business;
- Large business compliance with small business subcontracting plans and whether laws and policies are adequate;
- Prompt payment to small business subcontractors;

Panel Chair Marcia Madsen commented that the Small Business, Acquisition Workforce and Inherently Governmental Working Groups should give some thought to placement of their discussions in the report. Panel Member David Javdan responded that his Working Group would

prefer that their section be standalone, but that pieces should be integrated throughout the report as well.

Panel Member Joshua Schwartz asked Mr. Javdan to comment on the hierarchy of small business preference programs, indicating that the issue is a *"hot potato."* Mr. Javdan responded that he had invited Mark Toteff of Traverse Bay to speak to the Panel because the company's situation is illustrative of the problems the priorities can cause. He suggested that percentage goals could be set for agencies, and that contracting officers be given more discretion – noting that, currently, JWOD provides for no discretion. Stating that the idea may be controversial, Panel Member David Drabkin suggested that nine categories of preference programs may be too many. He also suggested that the Group should not focus exclusively on award of contracts at the prime contract level. Panel Member Carl DeMaio recommended that the Working Group consider looking at the preference programs strategically, and consider the cost-benefit of having so many programs. In response, Mr. Javdan explained that most large corporations have supplier diversity programs.

Panel Member Al Burman provided the status briefing for the PBSA Working Group. He explained that the Working Group put together a listing of relevant statutes, regulations and policies on PBSA to include an OFPP PBSA policy letter he issued in 1991 at a time when the Government was looking at innovative solutions to problems occurring as a result of growth in IT companies uninterested in doing business with the federal Government. The transformation from commodities to services procurements was accelerating at that time as well. He noted that both political parties support a PBSA approach to contracting for services. Dr. Burman said that after a review of the literature, GAO and IG reports, and listening to testimony, the Working Group issued a broad statement of issues: "*why has performance-based services acquisition, which is now the language for performance-based contracting, to take into account the whole broader realm of activity – why has performance-based services acquisition not been fully implemented in the federal Government.*" Dr. Burman said that many so-called PBSA contracts still focus on activities and processes, not on performance and results. He said that PBSA's focus on looking for innovative solutions is not being realized. Working Group members believe the focus continues to be on awarding contracts and not on monitoring performance and contract administration activity. Another problem with PBSA as it is currently being implemented is that incentives are not aligned with agency goals. Dr. Burman said the time and the right people on the front end of the acquisition are critical to the success of PBSA, noting that Mr. Reynolds had made similar points earlier in the day.

Panel Member Joshua Schwartz asked Dr. Burman if the PBSA goal of 40% for services established by OMB is appropriate. Professor Schwartz stated that he believes a reason for some agencies' failure to meet this goal is that PBSA may not be uniformly appropriate to satisfy all services requirements. Panel Member Carl DeMaio suggested that the Working Group might categorize services based on their suitability for the PBSA approach. In response to a question from Panel Chair Marcia Madsen, Dr. Burman stated that the Working Group had identified commercial best practices through various Panel presenters, and is considering recommending that OMB's *Seven Steps* be revised as "*Seven Steps Plus*" to incorporate these best practices. Professor Schwartz elaborated on an earlier comment by Mr. DeMaio, agreeing that there is a need for a middle ground between traditional and PBSA contracting.

The Panel Chair concluded the Panel meeting by announcing that an administrative meeting would be held October 14th, and that the next public AAP meeting was scheduled for October 27, 2005 at FDIC, Washington D.C.

INFORMATION REQUESTED FROM PRESENTERS TO BE SUBMITTED TO THE PANEL:

- Mr. Thomas Reynolds – Follow-up recommendations on ways for the acquisition system to retain the best aspects of reform (flexibility, business judgment) while ensuring that abuses resulting from the relaxation of the rules are minimized
- Mr. Poussard - AFPEO/CM Memorandums of Agreement on processes and procedures utilized by AFPEO/CM

ADJOURNMENT

The DFO adjourned the eleventh AAP meeting at 3:35 PM.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

DEC 23 2005

Ms. Marcia G. Madsen
Chair
Acquisition Advisory Panel

SUBJECT: PUBLIC COMMENTS TO THE ACQUISITION ADVISORY PANEL

TOPICS ADDRESSED INCLUDE THE FOLLOWING:

1. INTRODUCTION
2. ORGANIZATIONAL PLACEMENT OF THE ACQUISITION FUNTION
3. ACQUISITION WORKFORCE
4. GOVERNMENT-WIDE CONTRACTS AND INTERAGENCY CONTRACT VEHICLES
5. COMMERCIAL PRACTICES AND COMMERCIAL ITEMS
6. PERFORMANCE-BASED CONTRACTING
7. CONTRACT BUNDLING, STRATEGIC SOURCING AND SMALL BUSINESS
8. PAST PERFORMANCE
9. ETHICS

1. INTRODUCTION

The following comments are offered on the issues being considered by the Panel. In order provide perspective to the following comments, let me explain my background. I am currently a Government employee and have worked in Government contracting for my entire 32 year Federal career. I am offering these comments as a private citizen who has unfortunately had to watch the demise of Government contracting as it once was known. Although there have always been critics and criticisms of Government contracting, from an overall perspective the system has worked effectively. In my early days, I often commented, "The Government purchasing system was the most inefficient and costliest but fairest system in the world, and the fairness and integrity of the system was paramount and to be preserved at all costs." However, as discussed below, speed in contract placement and satisfying the latest "initiatives" became more important than the integrity of the system.

These comments reflect my personal experience and opinions from approximately thirty-two years as a practicing Government contracting officer (with ten years experience in the Department of Defense and twenty-two years in a civilian agency). It is my intent to retire within the next fifteen months, so the comments contained herein cannot be "self-serving." Further, it should be understood I have no political affiliations nor any corporate allegiances (not even ownership of any corporate stock). The lack of political affiliation and of any corporate interests has served me well over my career because it freed me to make independent decisions as a contacting officer that I believed were purely in the best interests of the Government. These comments are provided from that same perspective. The opinions expressed herein do not necessarily represent the opinion(s) of my Agency or other U. S. Government officials.

I began my career under the old Defense Acquisition Regulation in 1973, when the theory was that contracting officers only possessed the authorities delegated to them in

the regulations. Compliance with the rules and regulations was the undeniable objective, even sometimes at the expense of the mission or the requirement. However, as changes were sought in the system to decrease inefficiencies and permit faster response to program office requirements, the fairness, and even the integrity of the system, began to suffer. The change from contracting officers only possessing delegated authority to the use of the Guiding Principles in Federal Acquisition Regulation (FAR) 1.102 was a positive step, but at the same time possibly misguided. The idea that a contracting officer was permitted "to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs . . ."an d any action not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation was to be considered a permissible exercise of authority may be conceptually sound. But that delegation of discretion assumed that the individual exercising that discretion had the training and experience to utilize that discretion. With the reductions in authorized staffing, combined with the looming mass of retirements, who are the people with the requisite training and experience to now utilize that discretion?

Faster contract placement. The original concept of General Services Administration (GSA) contracts, where specific supplies and even services could be purchased off a select few schedules, generally cheaper than anywhere else, evolved to the point where in order to obtain revenue GSA proliferated its multiple award schedules and indefinite delivery/indefinite quantity contracts. But at what price and quality? This then gave rise to competition among agencies to see who could put out the most Government wide contracts. This was followed by contracting offices selling their services advertising their ability to make "speedy awards," which gave rise to competition among contracting offices for "business," with some offices 'specializing in GWAC's and MAS awards ..... and no one stopped to question what was happening. Unfortunately, Government contracting became a modified game of "I can name that tune in ____ notes,"w ith claims of capabilities to make multi-million contract awards in a matter of weeks. And now the rest is history.

The majority of work awarded under the GSA/GWACs contracts is on a Time and Material/Labor Hour basis. The use of this form of contract has always been limited by the FAR as follows: "A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that **no other contract type is suitable**" (FAR 16.601(c)). The worst form of contract in the FAR all of a sudden became "the flavor of the day" and has been subject to wide spread use, and abuse. Under such an arrangement, the contractor has no incentive to complete any work but to simply to keep working and deposit additional fee with each labor hour worked. In the recent past, I actually had a GSA contractor challenge me when I was asking for a reduction in his (outrageous) labor-hour rate, claiming I had no authority to ask for such a reduction because, "GSA had determined his rates 'fair and reasonable'."

The Government is not staffed, nor its processes equipped, to deal with such open-ened labor-hour arrangements on a universal basis, e.g., how many hours should a function have taken to complete, who is going to challenge the contractor on the labor hours used,

and on what basis? However, without such challenges, the contractor increases its profit for every hour worked and billed. Credit cards were issued and hailed as a salvation, producing speedier results for program offices, with a reduction in the numbers of contracting personnel. Yet credit cards have too become subject to widespread abuse, with greater restrictions and massive training of numerous people now required to attempt to stem the abuses. While a good concept, again the problem became controlling use/abuse among thousands of individuals.

So in the name of speedier placement of contracts and faster acquisition of supplies and materials, and with fewer, and arguably lesser qualified contracting personnel(with greater authority and latitude in making "business judgments), the Government has end up with unprecedented contract and system abuses which we are now seeking to correct.

Although change itself is not bad, many of the changes made in the regulations (or the liberal interpretations of the regulations or law) in the past twenty years, have resulted in the condition of federal contracting today. It is time to swing the pendulum back towards: tighter regulation; renewed emphasis on compliance and reduced 'speed' in placement (where speed, not quality of contract, is the objective); bring orderliness back to the process; and, re-establish the integrity of the Government contracting system. The FAR has always provided mechanisms to deal with true emergencies (see FAR 6.302-2), but unfortuately, most of today's "emergencies" are only the result of a dictatorial supervisor who wants something done on an artificial schedule. "Procurement planning" seems to be a nice regulatory concept, but in reality rarely occurs.

Unfortunately the current conditions have evolved over some twenty years and current contracting staff may require retraining in contracting basics and procedures, along with rebuilding the contracting organizational structure to ensure system integrity can be re-attained.

2. ORGANIZATIONAL PLACEMENT OF THE ACQUISITION FUNTION

The place to begin to re-establish the integrity of the system is to address the organizational placement of the acquisition function. Organizational placement is a valid concern as it may provide some insight into some of the basic problems in Government contracting. First let us address the purpose of the contracting function. There should be no mistake, the contracting function is a support function which should have no operational programmatic responsibility or possess any funds beyond that limited amount necessary to operate the purchasing function itself. This independence from mission execution helps to eliminate any inherent bias in the actions or operations of the personnel assigned to the procurement function. [Note: Having just read the GAO report on the Air Force's C-130 purchase, this need for separation is reinforced. Apparently, Mrs. Druyun was directing program requirements and changes, in addition to orchestrating the procurement itself. Obviously, this dual authority led to the break down of the checks and balances of the contracting system which should have existed.]

As a 'support function,' contracting offices have traditionally been relegated to a sub-staff position within operational organizations. The contracting office has always been the last place the program function (with mission responsibility and funding) had to go once a decision was made some form of contract support was needed. How long the program office had been dealing with a contracting issue, or what actions had been taken, or decisions made prior to the contracting office becoming aware of the "new requirement" only became known after receipt of what normally had become a now "urgent requirement." In many cases, non-contracting personnel, organizationally superior to the contracting function, have directed questionable contracting actions to be taken, against the advice of the contracting personnel, in the name of the program. This places the contracting personnel, the people ultimately held responsible for any contracting action, in the untenable situation of either complying with poor management edicts or potentially having non-contracting supervisors retaliate in the form of performance appraisals or even more subtlety, lack of performance awards.

The guiding principles of the Federal Acquisition Regulation (FAR) recognize that the contracting function is to be part of the Acquisition Team (FAR 1.102(c) and (d)), yet organizationally, the contracting office is normally subservient to non-contracting managers within the organization. Thus, by the time the 'acquisition' has reached the contracting office, pressures to award the contract 'quickly' have already begun. In some cases, contracting strategies have already been 'decided'(or possibly some strategies excluded due to actions already taken by non-contracting officials). These types of problems have been somewhat recognized through the creation of Agency Acquisition Executives, but this concept has not flowed to the lower level buying offices, which are still organizationally subordinate.

The organizational structure of checks and balances also has been lost with many contracting offices place in a 'support role' under the Chief Financial Officer. Under this lately popular scenario, if we could just then place the property/services receiving function under the same organization, an unpalatable situation has been created where a single individual is responsible for (1) creating a requirement, (2) funding it, (3) buying it and then (4) receiving it – a structure fraught with opportunity for fraud, waste and abuse.

In order for Government contracting to recover its integrity and begin to function as it should, as a minimum the contracting function within an organization must be placed in a position reporting directly to the senior leader of the organization and be a participating member of the senior staff of the organization. In this position, the senior acquisition official becomes aware of requirements as they are identified and is in a position to participate in the early 'program decisions' which may ultimately affect the procurement itself. An even better option would be to have the contracting function completely free from direction/control by the organization it supports, reporting only through contracting channels to the Agency Acquisition Executive. This would free the contracting function entirely from being subject to direction from a non-contracting official. (For example, I recently observed an acquisition under which procurement actions were directed by the program people in order to "save schedule." Unfortunately, the people giving the directions did not understand the necessary processes, and what should have been a two

week delay to resolve the contracting issue, ended up a three month delay in placement of the contract due to the problems encountered in trying to short cut the needed corrections. This is not a remote example.) Due to the subordinate organizational placement of the contracting function, this occurs on a regular basis. An independent contracting organization would still be responsible for supporting the program function, but would not be subject to other directions and pressures (e.g., performance appraisals, etc.) which could compromise the procurement process itself. The quality of the support provided by the independent contracting function could be reported through advisory performance appraisals from the receiving program office to the acquisition management structure to ensure that proper and timely support was being provided, but that the support was free from inappropriate organizational pressures and/or direction.

3. ACQUISITION WORKFORCE

With an independent organizational structure in place, attention must be focused on the acquisition workforce itself. The downsizing of the workforce, and the looming numbers of contracting personnel eligible for retirement has created a crisis in Government contracting. The acuteness of the crisis is so significant, that recently the General Services Administration issued a 'draft statement of work' for the acquisition of contract personnel from private industry to perform Government contracting duties! With all of the criticism of Government contracting, including lack of proper contract administration, improprieties in contract awards, misuse of other agency contracts, etc., the concept of "buying contracting personnel" from the private sector to perform Government contracting duties is, quite simply, ludicrous. Unfortunately, such a ludicrous action may now be a necessity based upon the actions and decisions of the past. If "contracting for contracting personnel" is permitted to occur, it should only be allowed long enough to recover from the poor personnel decisions of the past – a maximum of five years is suggested. Further **existing contracting** personnel must be exempted from competitive sourcing activities – as any such action will only exacerbate the current staffing situation, driving away the mid-level contracting personnel that are needed as part of the recovery program. It is these junior and mid-level workers who will become the contracting officers of tomorrow. Without a source to replace retiring workers, where does the Government think replacements will come from?

Although human capital 'studies' may be underway to ascertain the depth of the problem, studies do not solve the problem. Doing 'more with less", using lesser qualified personnel is not a beneficial practice considering the million of dollars at stake. Any reasonably good purchasing agent/contract specialist/contracting officer can pay for themselves many times over in the form of proper contract pricing/negotiation. (But as an aside, that is not, and should not be, the next 'metric' to be measured.) While studies are being made of the 'staffing needs," I am confident every purchasing manager can immediately identify his/her offices critical staffing needs if they were simply asked. Authorizing increased staffing to the contracting office that are undermanned, or will be undermanned as a result of retirements, is needed immediately. The learning curve is such that even if some over staffing occurs for some interim period that will not be a

detrimental as waiting and studying to get the staffing numbers precisely correct. Waiting and studying is not in the Government's best interests at this time.

Until contracting offices can be adequately staffed and trained, hiring needed assistance from the private sector may be an evil necessity. However, the evil can be mitigated to some degree by providing preference in hiring to retired Government personnel – which may necessitate revision of OPM's regulations on reemploying retirees to attract retirees back into service long enough to provide the needed training and guidance to the existing contracting staffs. Special authority should be created to contract for non-Government retiree personnel to work in the contracting organizations. Regardless how one attempts to justify such an action, there is no doubt these are, and would be, personal services contracts. And those non-Government individuals (retirees or private sector workers) should be subject to the same rules and constraints from an ethics and conflict of interest perspective as the active duty Federal employees.

The current initiative to create a single acquisition career development standard and Acquisition Certification Program for all Federal Agencies should be implemented immediately, and should provide for grandfathering of the existing (and retired) workforce. Such an action would provide for mobility of Federal personnel and also provide agencies the opportunity to hire seasoned contracting personnel without regard to which agency they served in. For example, contracting personnel in civilian agencies have operated under the FAR, and although not familiar with some of the Department of Defenses rules and regulations, could operate much sooner and more effectively than any new hire or 'contracted' support. An individual serving as a contracting officer in one agency should be able to transfer his/her credentials to another agency without having to become 'recertified' by the new agency.

In terms of the acquisition career development program, it appears the basics of Government contracting are being neglected in the quest for contracting personnel to become 'business managers.' This latest "fad" has permeated the new acquisition training programs from Defense Acquisition University (DAU). It appears that the system has lost sight of the fact that without a thorough understanding of the basics of Government contracting, e.g., contract law, contract pricing, contract administration, etc. the ability to be a business manager is lost. A return to basics is a necessity. Whereas for thirty plus years I have considered myself a contracting official, the work that I performed was in fact conducting the 'business of the agency' with the commercial sector. Changing the label of the work does not change the work. But without understanding the basic business structures, contract types and proper usage/application, contract pricing, proper proposal evaluation and award, contract law and contract administration, the concept of training someone to be a 'business manager' is a farce.

The second problem with the current training viewpoint is it is assumed that just because someone has been to a training course that they then have acquired the ability to apply those concepts to the work at their office. This is most likely not the case. Whereas training provides the concepts, it is the actual use of the concepts/processes under real life work which provides the experience. Without the experience, it becomes exceedingly

difficult to adapt the school house concepts to other work situations. Training must be reinforced by experience and that experience needs to be obtained under the guidance of seasoned and knowledgeable contracting personnel if sound business decisions and transactions are to occur.

Lack of trained, experienced staff has a severe impact on Agency operations. In the May 16, 2005 edition of the Federal Times.com, the following was reported:

> "Bid protests have jumped 30 percent in the last four years . . ." Protests showed a four-year rise from 1,146 to 1,485 starting in fiscal 2001, according to the Government Accountability Office, which adjudicates protests. At the same time, federal procurement grew about 50 percent to more than $300 billion, according to one academic expert who said the increase wasn't coupled with increased staff to handle the spending and make sure it's done correctly."

This is followed with a quote from Mr. James Phillips, executive vice president of Centre Consulting in McLean, Va., on April 25 at a National Contract Management Association conference. Phillips noted that changes to the Federal Acquisition Regulation in July 2004 add more detailed requirements for ensuring competition and getting the best value for the government. He then continued,

> "GAO is all about following correct procedure, so the more procedure that's put in place . . . [the] greater potential for protest regarding contract orders."

The result of conducting more and more complicated procurements by fewer and less qualified/experienced personnel is that each error brings on yet another new procedure thought necessary to correct the "problem." Yet each new procedure serves only to place additional burdens on an already overburdened, inexperienced staff.

There have been discussions on creating "career paths" for contracting personnel, such as contact management, contract pricing, contract administration, etc. and permitting people to only obtain training in the chosen "path." In a time of staffing and expertise crisis, attempting to create specialty workers is not an advisable approach, and will be detrimental as it limits not only work assignments but career advancement. Personnel interested in obtaining higher pay grades will most certainly have to focus on the 'management training path" as under current personnel policies, the higher pay grades are only given to the "managers." Thus, the Government will end up with lots of trained 'managers' and few trained contracting experts.

Consideration needs to be seriously given to a dual grade structure – the management structure of today in the 1102 Classification Standards, and an "acquisition expert" grade structure. Individuals with demonstrated expertise and exceptional skills should be elevated in grade along with the management personnel. Whereas the managers may be guiding and overseeing the operations, it is the 'experts' who are actually making the organizations function writing the contracts and making the 'business deals." By creating

the incentive of higher pay through the gaining of expertise, I believe we can accelerate the knowledge learning process, as well as improve the contracting products.

4. GOVERNMENT-WIDE CONTRACTS AND INTERAGENCY CONTRACT VEHICLES

As discussed above, the current problems with these types of contracts was simply the system was seeking 'speedy' contract awards, and abuse of these processes was virtually encouraged. If one contracting office would not abuse the processes in order to make 'fast awards," then another office was willing to "place orders: as a means to build their organizations and "reputations." I refuse to believe that the contracting officers who were abusing the processes did not know there were taking improper actions. I believe they were under the impression the system, and management, was supporting their misuse of the systems and therefore did not feel uncomfortable in taking those type actions. That is, they felt comfortable until the problems in Abu Ghraib, Iraq arose and the misuse was so blatant that it could no longer be ignored by "the system."

The current solution to "correct" these problems seems to be either: (1) require more (unnecessary) documentation; or (2) in order to avoid perceptions of problems, quit using the schedules. Neither is a desirable solution. The contracting officers who were placing the improper orders knew they were improper – but their actions were endorsed by the "system." The solution is simple - direct such activities to cease, with the penalty for knowingly abusing a contract being the loss of the Certificate of Appointment as a Contracting Officer. If a contracting officer in Agency 'A' provides an order for placement to Agency B and the contracting officer in Agency B places the illegal order, he/she forfeits his/her contracting officer warrant (not Agency A's contracting officer). However, if Agency A's contracting officer actually places the order directly (using Agency B's contract), then if the action is improper, Agency A's contracting officer warrant should be in jeopardy. This returns integrity and accountability to the process and can be clearly understood by all.

Also, the GSA schedules need to be revamped to eliminate the use of the Time and Materials/Labor Hour structures unless absolutely necessary and proper. The use of the Time and Materials/Labor Hour formats provided contracting offices convenient vehicles, supposedly already "priced" which they could them simply place orders against, with or without true competition.

5. COMMERCIAL PRACTICES AND COMMERCIAL ITEMS

This topic becomes comical at times. I can obtain virtually any "commercial service" I want under a GWACs or MAS contract, on a labor-hour basis, yet, cannot contract 'commercially' for those same services on a labor-hour basis. This makes no sense; however, what everyone seems to be missing is the issue, "Should the Government be contracting on a labor-hour basis for those services under any circumstances?" – I would contend the answer is, or should be, "No."

We have gotten into the issue of 'commercial practices' and commercial items, once again in search of a means for speedier placement of orders. First, the Government is not private industry and cannot act nor function like private industry. In private industry, if I don't like the job being done by a contractor, I can simply let the firm go. The released company's only recourse may be a lawsuit for breach of contract – if they are willing to pursue that course of action and then they have to spend money to hopefully prove breach. Commercial industry has no 'administrative appeal' process to higher level management officials nor will writing your Congressman generate any action. The private owner in this case doesn't even have to be "right" to take whatever action he/she decided upon. Under Government contracts, the contractor has rights and administrative appeal procedures, as well as recourse to the courts. Also, the bureaucracy in the Government is such that if the Government is going to take an adverse action against a company and it is likely to produce some form of adverse publicity, the Government will agonize over the issue requiring reviews by many layers of management before any action will or can be taken. And each higher level review will be looking at how to avoid taking the adverse action and/or avoid public criticism.

If private industry contracts for an accountant on a labor-hour basis and doesn't like the work that is being performed, or perceives the work is being performed too slowly, the owner can simply release the individual. If the contractor objects, he has little recourse and too large of an objection may result in no future work for him with that company. In the Government, somehow it must be demonstrated the work is unacceptable or even more difficult to prove and document, the work is being performed "too slowly." Any contract action taken may result in complaints being filed by either the contractor or the employee, and no amount or level of objection will result in any real impact on the firm's ability to bid on future work.

As a result in the differences in Government and the private sector, the Government may need to contract on a different basis so that at least its not paying profit on every hour used by the slow accountant - whom the Government cannot get rid of as easy as private industry. Also, because of the relative freedom private industry has, whether the work is overseen or not is a matter of preference as if the work product is not what was desired in the time frame desired, the contract employee can simply be "sent away." In the Government, someone has to be appointed to 'oversee' the work being performed and to certify the amount of time actually spent before even a payment can be made.

In commercial activities, the bottom profit line is the primary motivation. Calculated risks which fail only impact the bottom line, and if not too severe and endorsed by the company's senior management simply become a reported loss on a balance sheet. However, in the Government, a calculated 'failure' becomes headline news, a 'waste of Government funds' with all the critics and pundits lining up to participate in what can become a public thrashing. Now, compare the two sectors, and whereas if you were in private industry you may take a calculated risk, in the Government you would have a very difficult time finding someone to make that same risk decision. The Government has an armada of people whose only job is to criticize the work of other Government workers. And since the critics get to write the report, they even get the last word - even

when they are wrong. So the willingness for a Government employee to take such a calculated risk is minimal, at best. Again, the major difference is how private industry can approach a problem versus how the Government will react to that same problem.

In the final analysis, what may be workable and feasible in private industry may not work for the Government due to the differences in law and process. That is not to say, the Government should not look at how industry may conduct some transactions, but the ability to readily transfer and use a commercial procedure or process in Government must be carefully analyzed before being seized upon as the latest innovation in Government contracting.

6. PERFORMANCE-BASED CONTRACTING

One question being reviewed by the Panel is if it is possible for agencies to establish definitive requirements in specific and measurable terms at the beginning of the contracting process. The answer is "maybe." Unfortunately, in the zeal for everything to be claimed as performance-based (because people are reporting and measuring percentage of performance-based contracts awarded), strange arrangements and claims of performance-based are being made in the name of percentages, not in fact. In order to be able to claim 'success' under the "performance-based contracting initiative," even Time & Material/Labor Hour (T&M/LH) contracts have been declared as 'fixed-price' arrangements (because the "rates" are fixed), and therefore the orders placed are reported as "performance-based." While this is patently ridiculous, it has become "accepted"a s the interpretation provides favorable statistics.

It was reported in the GovExec.com, May 17, 2005, that the Advisory Panel was advised by acquisition experts from the public and private sectors that performance-based contracts - which include incentives for good work - need to be overhauled. Further, the article indicated that Janice Menker, director of government acquisition policy for Concurrent Technologies Corp indicated, "Performance-based contracting is not working" She said agencies call some contracts performance-based, but they lack incentives and statements of work."

I would contend that the concept does not need to be overhauled, first because there is not a great deal of guidance/direction to "overhaul." The problem is the application and implementation coupled with the expectation that every contract must be performance-based. That expectation is what needs to be overhauled. Government employees' performance is measured how fast contracts are awarded and was the contract "reported" as performance-based. Speed and statistics is the measure of performance, not necessarily quality. So if I quickly cobble together a contract and report it as "performance-based" the program office is happy because they received their contract and the contract managers are happy because it was "reported" as performance-based. The fact that it is poorly written contract and not truly performance-based are neither measured or really cared about.

The basic concept of performance-based contracting is good. When it makes sense and can be applied correctly, it can produce meaningful benefits. When misapplied, it can produce undesirable results. My favorite example, actually published on a Government website as a "good practice," was a sample performance-based service contract (PBSC) for "training services." The measures of performance upon which fee/profit was based were: (a) percentage of students passing the exam; and, (b) student rating of the instructor. While passing the exam and student satisfaction with the course would initially seem to be meritorious values – how is the contractor supposed to perform under this contract? The options for the contractor are: (1) hope the instructor establishes some rapport with students and hope the students learn the course material to be able to pass the exam; or, (2) teach the exam questions, entertain the students and to really make them happy, let them out of school early each day. I would contend option 2 is the most assured way for a company to maximize profits under such a "performance-based" arrangement. Unfortunately, when the students return from work, they will have learned little to nothing about the subject matter to apply to their work – but nevertheless, a "performance-based contract" had been awarded.

Similarly, claiming T&M/LH contracts are performance-based simply falsifies the reporting systems leading organizations like OMB and OFPP into thinking all is well within the systems and that there are only pockets of resistance with a few recalcitrant contracting officers that are not "getting with this innovative and worthwhile program."

The "Seven Steps" training program for performance-based contracting emphasizes the significance of Performance Work Statements, yet this is viewed as a "contracting" training program. Work Statements are generally considered a "technical product" which has to be (should be) written by the program offices. The FAR contemplates the creation of "Acquisition Teams" consisting of all participants in Government acquisition including the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services. Such "teams" are created for the major and most significant contracts, but these large dollar contracts comprise the smallest number of actual contracts written within Government. The day-to-day support contracts written in every contracting office however, are generally written under 'urgent' conditions, with little 'advance planning" occuring, and by the time the contracting office becomes involved, some form of statement of work has been literally thrown together by the program office. Of course, the requirement is "urgent" and there is no time to rewrite the statement of work into a Performance Work Statement. But the contracting office is supposed to somehow convert the requirement into a PBSC because the contracting office is being measured on percentage of PBSC contracts written. (See issue above on the organizational placement of the contracting office.) The result being either the contract not being performance-based, or even worse, a poor example of a PBSC is written with the wrong measures for the work being sought in order to get the contract placed "quickly" and to be able to report it as "performance-based." [The adage of a "successful operation but unfortunately the patient died" comes to mind.]

In order for performance-based contracting to become embedded within the Government, training on the concept needs to be incorporated into the basic technical training programs for program personnel, so that the program personnel understand the value of the concept and the processes necessary for creation of an effective contract to support their programs. Holding 'special contracting training" for the technical personnel simply reinforces the concept that this is a "procurement program" which the program personnel perceive as being forced to attend to satisfy some political agenda.

There should also be some recognition that all contracts cannot be written in a performance-based manner, and such exceptions should be clearly recognized in the regulations. As an example, let's assume an attempt was made to write a performance-based contract for the Advisory Committee's work. The Committee charter is to provide independent advice and recommendations to the Office of Management and Budget. As a performance measure, upon which the Committee Members would be paid "fee" or bonuses, we could measure the number of recommendations made. Whereas the Committee would certainly produce a plethora of recommendations, the quality of all of those recommendations would be highly suspect – the "objective" was number of recommendations, not quality of the recommendations. Quality would be subjective and if used would result in the "contract" not being performance-based. Another "performance-based" alternative would be to measure the amount of private sector and public sector input received in the formulation of the advice and recommendations. Thus the incentive would be for the Committee to gather as much input as possible, again without regard to quality and content, and simply report thousands of comments from both sectors. However, the Committee's final report could simply say, the consensus was, "no problems exist." In either of these two cases, both "contracts" would be reported as "performance-based" but the outcome of both is not what was really sought. I would contend that the work output sought from the Committee would not be suitable for use of a "performance-based" contract. Contracts for true consultants providing advice, research and development contracts, applied research, and support service contracts where quality of the product is the desired objective are a few exceptions which immediately come to mind. T&M/LH contracts should be banned from being reported as performance-based on the basis they are 'fixed-price" (which could have dual benefits resulting in reduced use of these contract forms). It is conceivable however, to have a T&M contract (if that form can be justified) which could be truly established as performance-based, particularly on a task order basis.

One of the issues under review by the Advisory Panel was what metrics are agencies using to assess the benefits of PBSA? I am not aware of any regulatory requirement to attempt to maintain such comparative data, although there are Government claims of x % "savings" when using PBSA procedures. Further, such a comparison can be misleading unless the predecessor contract and the PBSA contract each required the exact same work. For example, converting a non-PBSA contract for janitorial services to PBSA, but changing the frequency of cleaning in the PBSA contract (increase or decrease) does not permit meaningful comparison, without a great deal of analysis (if even possible at all).

The May 17, 2005, GovExec.com article also indicated Henry Kleinknecht, the program director for procurement management at the Defense Department's Office of the Inspector General, advised the Committee that performance-based contracts did not produce the promised savings, because they were not effectively implemented and that he also said there was a large number of sole-source contracts, which were awarded without competition. First, sole source contracts and performance-based contract bear no relationship to each other. I can write a very good performance-based contract on a sole source basis, and a very poor, competitively awarded performance-based contract. In fact, I could probably argue I could write a much more effective performance-based contract on a sole source basis because I could deal one-on-one with the company and would not be fettered with all the regulatory and legal trappings (and restrictions and protest potential) of trying to accomplish the same objectives under full and open competition procedures where I had to ensure all companies were treated fairly and equally. Performance-based contracting and sole source contracting are totally unrelated issues. Whereas I will agree that poor implementation of performance-based contracting can result in less than desirable performance, I would have to be convinced with some real comparable data that on a universal basis performance-based contracting will reduce cost. In fact, logic would tell me that if the performance-based contract was written tightly enough to ensure the expected performance was provided, cost/price might in fact increase due to the need for the contractor to ensure the services/products being provided in fact met the specifications.

I believe most Government contracting practitioners would agree that when PBSA concepts are used properly, there can be savings to the Government which can occur in actual cost of the contract, reduced costs of oversight and administration, and/or even a reduction in administrative issues and disputes with the contractor. Conversely however, when used improperly there is an increased cost to the Government in these same areas. A poorly written PBSA contract can not only result in unintended consequences but may result in higher costs to the Government in terms of actual money paid as well as increased administration time, efforts and costs. As an example, if a contract was performed under a cost-plus-award-fee basis, and the contractor did not perform some work acceptably, the work might have to be redone and the contractor's might suffer some reduction in its performance rating for the period. However, if this same work was done under a cost-reimbursement PBSA contract, and the standard for acceptable work was 100%, and fee was tied to that criterion, then the contractor could reasonably be expected to install added quality checks and reviews as part of its initial cost proposal to ensure all services met requirement to ensure fee reductions did not occur. The net result could well be the Government paying more for the services than previously occurred due to the quality standard of the PBSA.

7. CONTRACT BUNDLING, STRATEGIC SOURCING AND SMALL BUSINESS

The Government's policies and expectations on these issues are conflicting. The expectation is for acquisition personnel to save money – which can readily be done by consolidating like items into a single contract. That's considered "bundling" and is

considered improper because it can create a negative impact on awards to small businesses. The Government's initiative is to increase awards to small businesses; but "strategic sourcing," also being touted as being a good means to reduce agency costs, is somewhat by definition "bundling" and also results in reduced opportunities for small businesses. Demands are being made to avoid bundling and increase awards to small businesses, at the same time when there is a recognized staffing crisis in the workforce in terms numbers of qualified personnel. The expectation for acquisition personnel to sort their way through this mine field of conflicting policies and initiatives is a challenge.

These issues can be managed but the expectations and rhetoric must be tempered. Increasing the numbers of contract awards with a reduced acquisition workforce will simply lead to poor contract administration as the focus of any contracting office has to be on satisfying its customers with new awards. Administration of existing contracts has to wait in line for attention and unless contract problems are identified, sometime by accident, they tend to not even be recognized. Yet contract administration is also one of the areas considered to be "high risk." Whether this is really true or not on a universal basis is questionable. In any system, including the commercial world, some level of inefficiency or even poor performance will exist. However, attempting to compare the dismissal of a poor worker in the private sector versus a poor performer in Government service once again reveals stark differences in law and process.

8. PAST PERFORMANCE

This is another arena where a 'fad' has gone overboard. Due to the requirements to evaluate past performance as part of virtually every source evaluation (FAR 15.304(3)(c)(i)), contracting offices are being inundated with past performance questionnaires from multiple companies bidding on various Government projects. I equate these questionnaires to the references people identify on resumes – one can rest assured that someone will not include an enemy or someone who will only provide an unfavorable reference on a personal resume.

Similarly, companies are only going to seek 'past performance' evaluations from those contracting offices where their work is doing well, they certainly are not going to provide a reference if they can avoid it where there are performance problems and an ongoing dispute with the contracting office. The net result of this is that the process of obtaining past performance information has become a burden on contracting offices, sometimes receiving as many as two to three requests a week, with little to no true benefit being gained in the evaluations. (And the "neutral evaluation" standard for company's without any experience in performing a service is perplexing at best.) I have not personally observed the mandated use of past performance evaluation criteria as providing any meaningful information or discrimination between competing firms as the references used almost always provide a rating of "good" or "outstanding." Also, the amount of information requested from offices conducting past performance evaluations varies considerably – from a simple half page check sheet, to a multi-page question and answer form with spaces provided for comments. Obviously, those offices using the half-page

checklist have recognized the marginal value of this process and are literally "checking the box" to claim use of past performance in the proposal evaluation.

It is recommended that the current FAR requirement for use of past performance evaluation criteria, which is currently undefined, be revised and, unless returned to an optional criteria, a standard criteria be established for use by all contracting offices. That criteria should simply be that each company identify in a proposal any contract terminations (convenience or default), provide the original estimated cost or initial price versus final cost/price (on completed contracts), and fee available versus fee earnings for its Government contracts for some period of time (e.g., 1 -2 years), and identify the contracting officer for each contract with a contact phone number. (The FAR language could provide for supplemental information when deemed necessary and appropriate by the contracting officer.) The soliciting office, at their discretion, could then contact some or all of the contract references to validate the accuracy of the information provided. The soliciting office could also check the Government's performance database for information on the offering firm. This process would facilitate the past performance evaluation process, eliminate excessive efforts on the part of the soliciting office and eliminate the labor intensive use of the past performance questionnaires currently being circulated throughout the entire Federal Government in the name of "past performance evaluations."

9. ETHICS

No discussion involving Government contracting in these times can occur without a discussion on ethics. Unfortunately, the issues discussed above have given rise to the ethics problems occurring today in Government contracting. Under the old, traditional processes, rarely did one hear about an ethics problem. This was in part due to the rigidity of the systems, the checks and balances which existed, and the high probability of a dishonest contracting officer being caught. However, as the systems were 'loosen' and program and management personnel became more and more involved in the contracting process, the opportunity and probability of ethics problems arising increased without any change in the ethics programs. There is still the Procurement Integrity Act which covers aberrant situations like the Druyun/Boeing problem; however, with the advent of 'best value' source selections, where political favoritism or the potential for future employment opportunities may exist, the proverbial "unannounced" selection criteria can develop and the opportunity for abuse has increased exponentially.

The Procurement Integrity Act clearly covers the actions of contracting officers and source selection officials. It does not cover however, senior management personnel issuing unwritten directions to those personnel. Let us consider the scenario where some large, multi-million (billion?) dollar procurement program is being conducted. Whichever contracting officer is assigned will most certainly inherit post-employment restrictions and I believe every contracting officer I know is fully aware of those restrictions. (Certainly Ms. Druyun was aware of those restrictions, and was fully aware that what she was doing was wrong at the time she was taking those actions.)

But let's turn our attention to the individuals appointed as the source selection authority/official for the multi-million dollar acquisitions. How many occasions have we seen Secretarial, Assistant Secretary or other high level senior officials serving as source selection officials? Generally, it has been my observation that this 'duty,' which will carry with it, post-employment restrictions, gets delegated to some mid-level executive. The system blindly assumes that this mid-level executive is the final decision maker. Unfortunately, that is hardly even a credible assumption. Can anyone really believe that a major, multi-million (billion) dollar acquisition, potentially critical to an agency, is going to be "independently" decided by some mid-level career executive? No, in reality that mid-level executive is going to select the firm whom he is permitted to select by his/her superiors. And while the mid-level executive inherits the post-employment restrictions, the real selection official (the political appointee or retiring senior executive) who "concurred" with the selection is free to go to work for the "selected company."

The Government personnel working inside the system can plainly observe these type activities occurring, but there is no proof; however, it fosters attitudes of if they can get away with it, why can't I; or, distrust (disgust) with the actions of the senior managers – neither of which is a very productive attitude. So in this case, ethics becomes an issue applicable only for the working level personnel, not to the most senior management. Ms. Druyun was caught because she was too visible and too actively involved in the contract management and negotiations. Better (for her) if she had been an "unofficial" reviewing official and orchestrated the decision though some subordinate selection official or contracting officer instead taking the actions herself. An interesting study would be to review the post-Government employment of the most senior executives and see what correlation exists between their "new employers" and the companies awarded the major contracts by their Agency before their departure.

A simple solution exists, have contract source selection officials certify under penalty of prosecution, that they were not influenced in any form or fashion by anyone in their chain of command, and require contracting officers to document each contract file with the names of those individuals who substantially participated in any acquisition. These relatively simple documentation requirements will aid in easily identifying who really participated, and also serve as a deterrent to senior managers attempting to "influence" selection officials. I believe those of us in the procurement world fully understand our Procurement Integrity limitations. However, I have seen some very liberal legal interpretations about coverage of program and management personnel, i.e., if they were not the final signatory authority they were exempt, regardless of the role they actually played in the proposal evaluation, contract selection and/or contract negotiations.

Hopefully the above comments may be of use and value in your deliberations. Should you or your staff have any questions or wish to discuss any issues further, please feel free to contact me.

Thomas E. Reynolds

Statement of W. Frederick Thompson to the Services Acquisition Reform Act Acquisition Advisory Panel

September 27, 2005

BACKGROUND AND EXPERIENCE

Good morning, my name is Fred Thompson. I am the Vice President for Management and Technology at the Council for Excellence in Government. The Council is a non-profit, non-partisan organization working to improve the performance of government at all levels and to improve government's place in the lives and esteem of American citizens. My role in the Council is to focus on ways to improve government performance in technology, human capital, financial management and acquisition activities. I work with the Council's corporate partners and with government managers to highlight areas that need to be improved and to work on realistic solutions to challenges that face government in these areas.

I have a substantial personal background in technology and services acquisition. In 1981 I became responsible for an agency-wide effort at the U.S. Office of Personnel Management (OPM) to define its future IT requirements and its IT strategy. Over the next few years I worked within the Federal Information Resources Management Regulations and the Federal Procurement Regulations to replace OPM's core computing capability and the systems that supported the Civil Service Retirement System and the Personnel Investigations Processing System. In 1988 I joined the Internal Revenue Service (IRS). I developed and successfully executed an IT procurement strategy for IRS that resulted in the replacement and integration of its corporate processing capabilities and the upgrade and replacement of its Service Center IT complexes. I also led major service acquisitions to create an FFRDC, an integration support capability and an ongoing IT services acquisition vehicle. I oversaw the evaluation of many IRS IT procurements and served on source selection boards at the IRS acquisitions and on an Air Force source selection board. I have also served as the COTR for a $1.4 billion IT systems and services integration contract.

In 2002 I retired from the Department of the Treasury and, soon after, joined the Unisys Corporation as its Practice Director for eGovernment. In that role I was responsible for leading Unisys bid teams for multi-agency eGovernment opportunities. I also served for approximately one year as the on-site program manager for a multi-million dollar IT support contract that Unisys held. This contract had been awarded as a performance based contract. In May 2005, I joined the Council in my current position.

POST EMPLOYMENT RESTRICTIONS

Because of post employment agreement restrictions, I will not testify with respect to any information about the Unisys Corporation or its practices that is not generally known outside the company. My testimony should not be interpreted to describe any Unisys business practices. My comments reflect my personal judgment and insights gleaned from my broad experience across my entire work career.

THE IDEAL OF PERFORMANCE BASED CONTRACTING

The concept of performance based contracting is very attractive to both government and industry. From a government perspective, it allows industry to innovate and requires only a very brief description of the outcomes to be achieved. Performance based acquisitions should be faster, easier and cheaper to perform than traditional acquisitions with detailed specifications.

This approach is equally attractive to Industry. Being measured on results and having the freedom to adjust practices, processes, technology, staffing and investment over time to achieve those results is attractive to industry. Having the government act with a more commercial-like mindset that allows industry to cut the cost of competing for government contracts and allows more freedom of performance would benefit industry.

For a number of reasons, these goals and this mutual value of performance based contracting is not always achieved. I would

like to address what I believe to be some of the challenges that inhibit the success of performance based contracting and to suggest what I think could be done to make performance based contracting more valuable for both parties and more valuable for the taxpayer.

FULFILLING THE PROMISE OF PERFORMANCE BASED CONTRACTING

To achieve better results through performance based contracting, the government should carefully consider when and where to use it, should use well trained and highly experienced officials to design, award and manage these contracts and should discipline the way that it monitors and measures day-to-day performance. Specifically:

1. Government buyers using performance based contracts need to be well informed and highly knowledgeable about the technologies and commercial business practices of industry. When government issues a performance based contract, it is, in effect, stating that the outcome matters but the process of achieving this outcome can be designed and managed by the contractor. In other words, the normal commercial practice of the contractor is acceptable. By making this assertion, it allows the contractor to substitute its assumptions that define its commercial practice for government detailed specifications that would otherwise scope and define the process for results delivery. Each contractor has the incentive to make assumptions that benefit its proposal and its competitive position. The only check upon this is the government's ability to determine whether or not these assumptions are really reasonable and truly reflect commercial practice. Otherwise, the government runs the risk of awarding to the contractor making the most favorable assumptions vs. the contractor delivering good quality at the truly best price. It is not reasonable to expect that every agency would understand every industry well enough to make good decisions about business practices and proposal assumptions. I would recommend that the government either 1) establish centers

of excellence for consultation on various technologies and support categories or 2) that only select and highly experienced agencies with deep industry expertise perform such acquisitions across government. Acquisition personnel hired to perform these duties should have worked in the industries or technologies in which they specialize and they should bring deep personal acquisition and subject matter expertise to bear in the buying decision.

2. The government should use performance based contracting with great care when it is the expert in a work process and has a profound interest in the way that work is performed. The implicit assumption behind performance based contracting is that it is the results that matter and that great leeway could be exercised in obtaining the desired results. In many cases, this is reasonable. To use a simplistic example, if the government requires the grass to be cut to a certain height, it is of no consequence to the government whether that work is performed by a hand mower or whether the work is performed by a riding mower. On the other hand, there are commercial practices that differ significantly from government practices. An example would be debt collection. Private 3rd party debt collection is common. In such arrangements the debt collector often owns the debt and has no interest in retaining the debtor as an ongoing client; its only interest is to have the debt repaid. With government debt collection (such as that performed by the IRS), the debtor remains a citizen and a taxpayer and is therefore a continuing "customer" and an ongoing "owner" of the collection agency through virtue of being a citizen with recourse to Congress. The commercial tools, techniques and approaches of a debt collector may well need to be modified substantially if the IRS debt collection function were to be fulfilled by a private debt collection agency through a performance based contract.
3. The government needs to reduce the ambiguity of its performance based work statements. A number of performance based contracts have been issued with very brief 4 or 5 page statements of objectives and these objectives have then been accompanied with dozens of additional pages of detailed requirements. The message is

highly ambiguous. On the one hand, the commercial provider is being given the opportunity to design a solution. On the other hand, major portions of that design are constrained by highly specific requirements. The evaluation process gives the government the flexibility to treat its "supplementary" technical requirements as the basis for the award. This leaves the contractor in the position of having to take risks in interpreting what the government really wants. These risks and the contractor's interpretation of them could cause the contractor to over-bid the requirement or could cause it to under-bid the requirement. The impact would either be that the government pays too much to fulfill the requirement or that the contractor is not able to perform adequately at the price the government pays. Neither outcome is desirable.

4. <u>The desired result of a performance based contract needs to be clearly articulated.</u> The most critical aspect of a performance base contract is the definition of the product or result or specific performance level to be obtained through the contractor's performance. I have seen contracts in which a global statement of support needs suffices as the requirement and a global statement of contractor capabilities and approach suffices as the contractor commitment. The true contract is then defined through the specific task orders issued under this very broad contractual framework. Those task orders, in effect, become a mighty forest of mini-contracts each of which has its own idiosyncratic requirements, terms and conditions. This raises the cost of contract administration to the contractor and to the government and brings into question the basis under which the contract was awarded. If each task order defines the contract, what did the contract define? If the result that the government wishes to obtain cannot be clearly articulated in the proposal, a performance based contract may not work to the benefit of either party.
5. <u>The buyer needs to be the user. The contracting officer advising on award needs to be the contracting officer delivering the result.</u> In one major government-wide contract that I am aware of, an agency official managing an

agency with a few thousand people and having only peripheral interest in the contract was the Source Selection Official for that contract. I do not believe that created the right environment for a reasonable award determination. For there to be adequate accountability in the process, I believe that the people who will have to make the contract work (from the government side that is the CO and the COTR and the Program Manager) need to be intimately involved in the award of the contract and need to be held accountable for the delivery of the result. I feel that the same thing is true on the contract side. The bid manager should be the program manager responsible for the delivery of the contract. When everyone knows that they are accountable for the long term results of the contract and that they cannot hand the contract off to someone else to deliver, there is a much stronger governor on the system. I have seen situations where contracting officers obtain awards for awarding a contract at a low cost where it is unlikely to be successfully delivered. Good performance based contracting should be life-cycle performance based contracting where results are measured and awards for management and delivery are made over the life-cycle of performance not exclusively in the warm glow of a contract award when everyone feels good about the future but no result has been obtained.

6. The COTR of a performance based contract needs to accept a reduced role. The government has not had a lot of experience with performance based contracting. Therefore, many COTRs feel that they can perform their functions as they always have, having close working relationships with contractor staff and identifying performance deficiencies and seeking corrective action whenever the process of performance does not meet their expectations. Often, contracting officers who could influence the actions of a COTR are handling a plethora of government-wide acquisition contracts or are managing a general contracting utility and are too far removed from the action to influence a COTR's actions. The contractor has a disincentive to complain about intrusive COTR actions or instructions because such complaints could cause it to lose business.

Therefore, the contractor makes the ongoing process and delivery changes suggested or directed by the COTR. Taking these actions may inhibit its ability to make a profit in delivering the required performance. A performance based contract assumes relative freedom of delivery approaches after award. When this is not allowed to occur, delivery and value to the government suffer. In part, this challenge can be dealt with through COTR training; in part in can be dealt with by creating closer ongoing working relationships with COs and contractors. However, the bottom line is that if the government wants to manage a contract as a time and materials contract, it should award it as a time and materials contract rather than awarding it as a performance based contract. These are issues that should be discussed at length among the Program Manager, the Contracting Officer and the COTR before a specification is every released. In my view, the CO, as the owner of the contracting process has the ultimate responsibility to lead and manage this relationship through the life of the contract.

CONCLUSION – PRINCIPLES FOR IMPROVING GOVERNMENT CONTRACTING

I would like to conclude by identifying what I believe to be a few principles for improving government contracting. First of all, I believe that there is a lot of room for improvement. I think that government contracting often sacrifices life-cycle cost and quality of performance for the value of competition.

Competition should be viewed as a means to an end and not as an end in itself. The objective of government contracting should be to achieve the best performance available at a reasonable price. Although competition is generally viewed as the best way to achieve this, government rules, processes, timetables and ambiguity often frustrate market forces that would lead to lower costs. In general, I would offer the following principles:

1. Government should seek to reduce the OVERALL cost of competition. If 4 companies each spend $1 million to

compete for a government contract, the value to the government from this $4 million expenditure is zero. It would be far better for the government and for the contractors if the competition were cheaper and faster. The government pays for contractor sales and general and administrative expenses associated with the added expense of federal contracting. Simplifying the process would ultimately reduce costs for the government and its contractors.

2. Reduce the time for competitions. A quick round of bids for an RFI and another limited time but more detailed round for a smaller subset of qualified bidders is one way to do this. This reduces costs for contractors involved and winnows the field of contractors without a reasonable chance of winning. That winnowing is achieved through competition and not merely through contract vehicle selection. One recent procurement that I am aware of identified an 18 month bidding process for a task expected to take 24-36 months to deliver. This is on its face unreasonably costly.
3. Emphasize normal commercial practice. As noted above, one of the virtues of performance based contracting is that it allows industry to provide more commercial solutions and requires less tailoring of solutions to the government. When this is viable, this is the least costly and least risky approach for both parties. However, the government needs to be an informed buyer and a careful buyer and contract manager for this to work. It needs to reduce contractor bid risks by clearly articulating the requirements that it plans to hold the contractor to after award. I believe that the concepts I have articulated in this testimony can help the government achieve this objective

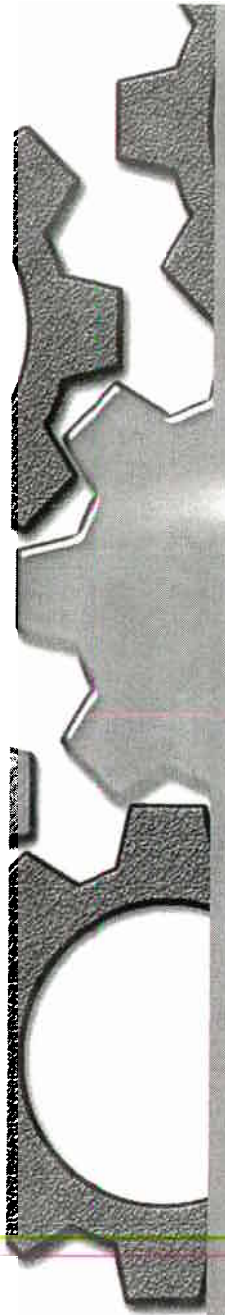
Thank you.

Attachment 3

Acquisition Advisory Panel
September 27, 2005

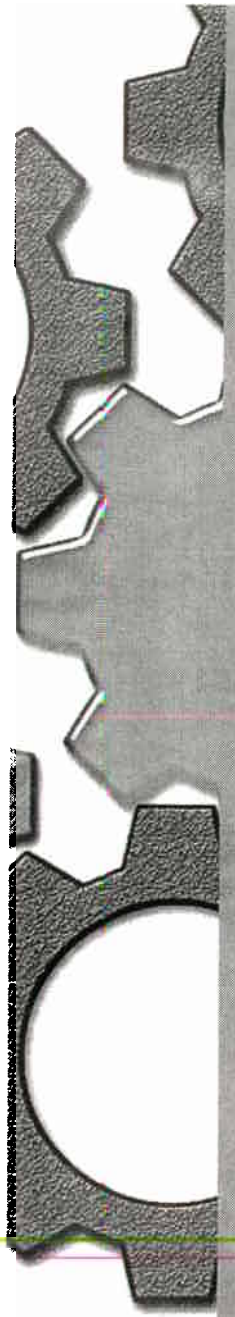
CONTRACT STRUCTURE AND CRITICAL TERMS

Daniel A. Masur



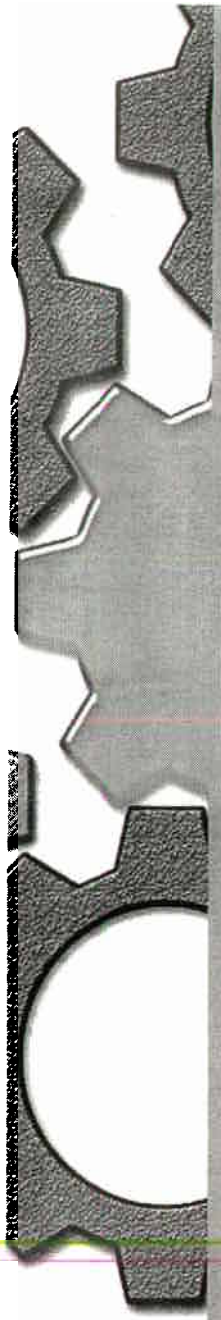
Fundamental Purpose of IT and Business Process Outsourcing Contracts

- Memorialize all business terms, i.e., the allocation of legal, financial and operational responsibility and risk
- Address all known and foreseeable issues
- Provide a workable framework to manage the relationship, address future change and resolve disputes
- Provide proven contract management tools



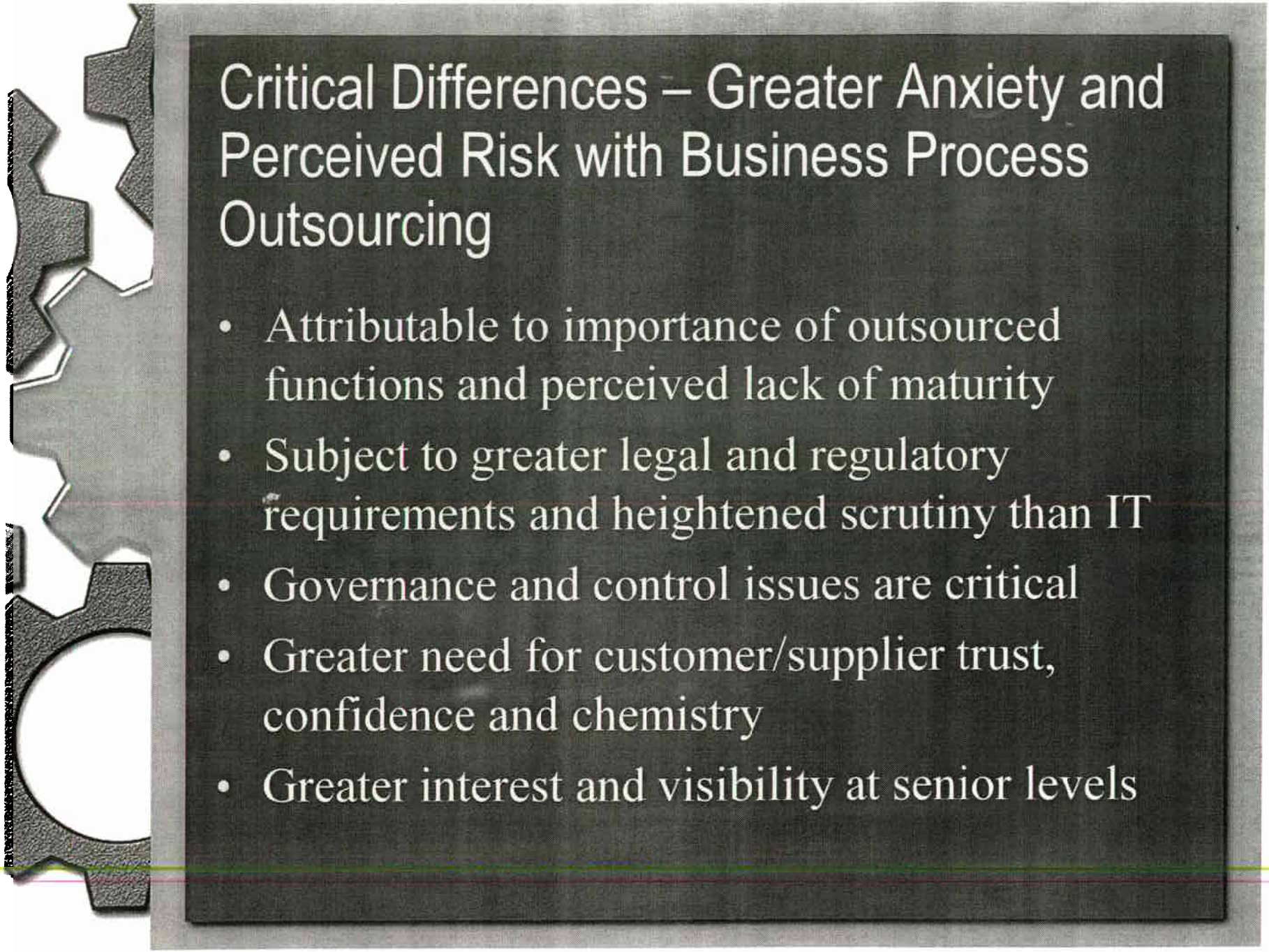
Fundamental Purpose of IT and Business Process Outsourcing Contracts

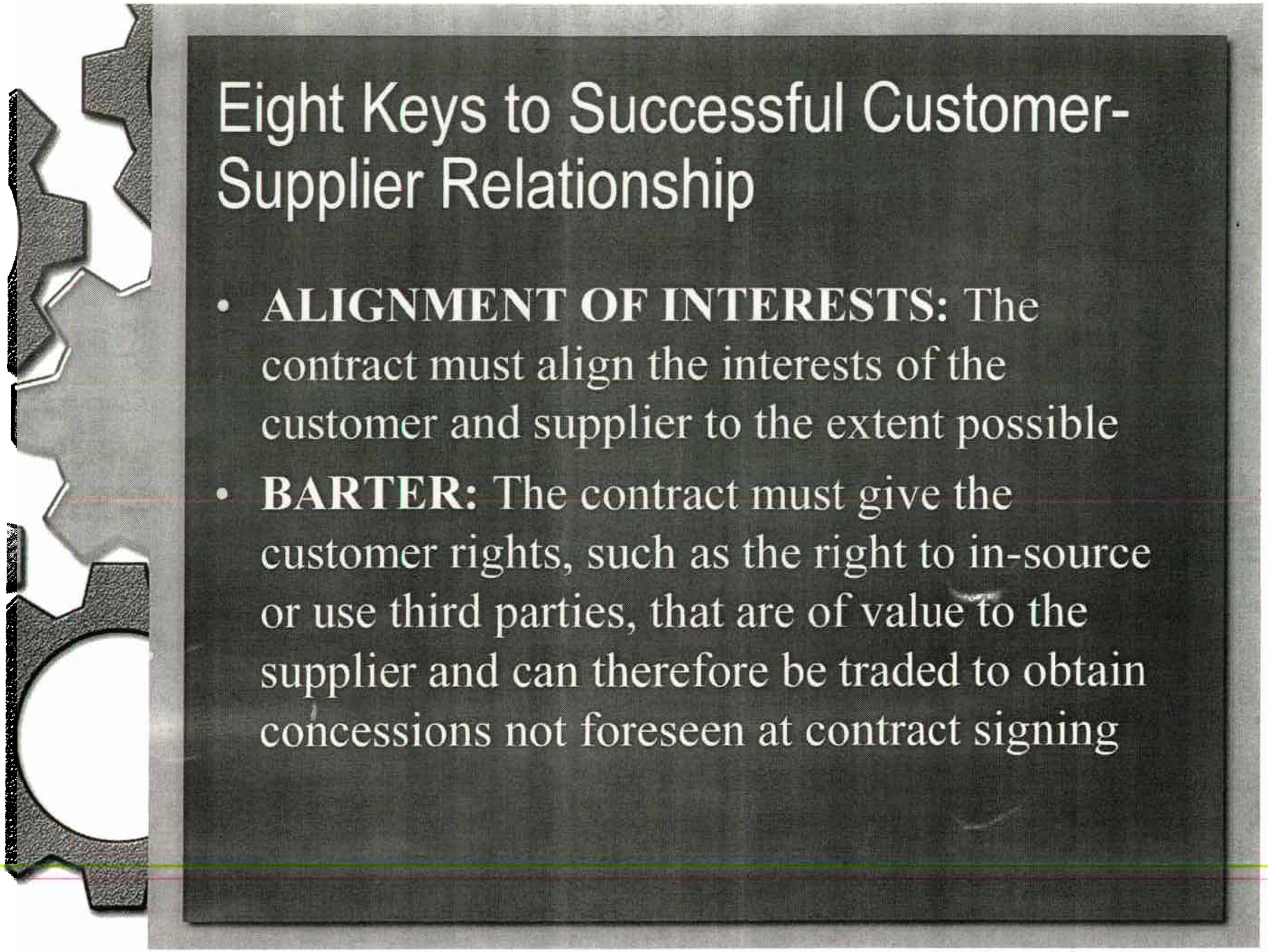
- ITO and BPO contracts must be crafted to provide customers with tools to:
  - Retain leverage and manage change
  - Manage in-scope and new services
  - Monitor and manage service quality
  - Deliver promised cost savings
  - Provide competitive price protection
  - Manage potential liability and risk without impacting price

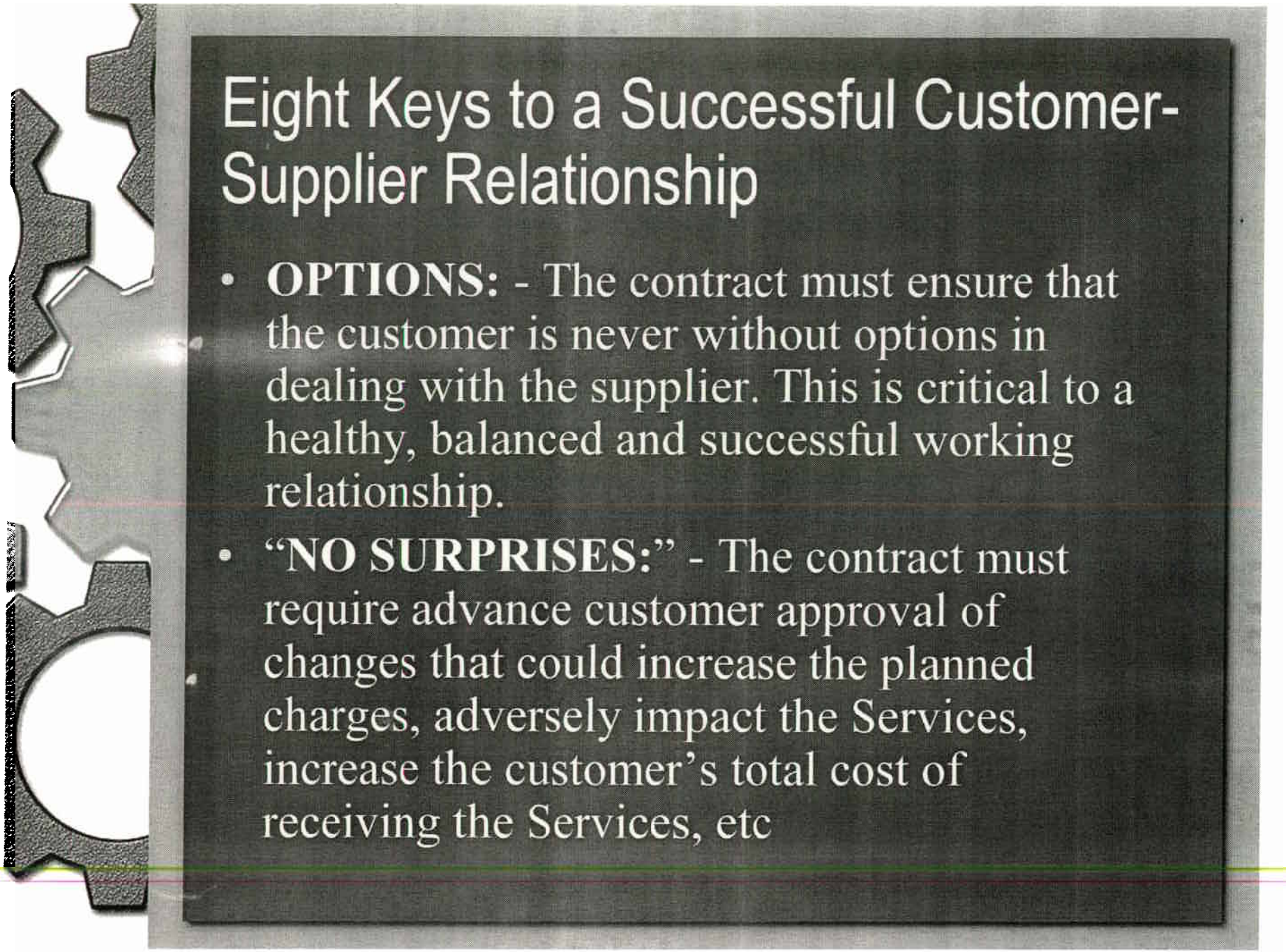


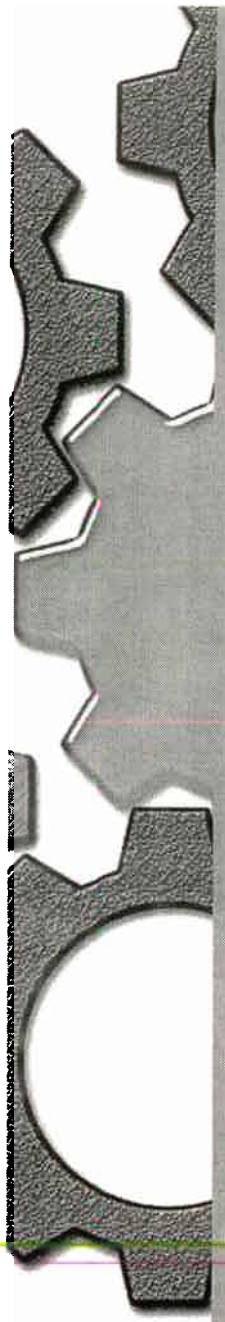
Critical Differences – Business Process Outsourcing Less Mature than IT Outsourcing

- Service delivery strategies and tools evolving
- Pricing models and methodologies also evolving
- Less history regarding evaluation and pricing of perceived risk
- Fewer competitive benchmarks and Standards
- Unlike ITO, not yet commoditized


Critical Differences – Greater Anxiety and Perceived Risk with Business Process Outsourcing
• Attributable to importance of outsourced functions and perceived lack of maturity
• Subject to greater legal and regulatory requirements and heightened scrutiny than IT
• Governance and control issues are critical
• Greater need for customer/supplier trust, confidence and chemistry
• Greater interest and visibility at senior levels

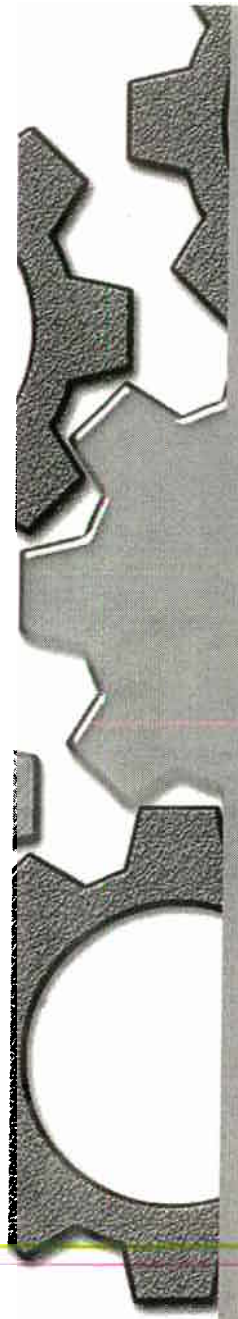

Eight Keys to Successful Customer-Supplier Relationship
• ALIGNMENT OF INTERESTS: The contract must align the interests of the customer and supplier to the extent possible
• BARTER: The contract must give the customer rights, such as the right to in-source or use third parties, that are of value to the supplier and can therefore be traded to obtain concessions not foreseen at contract signing


Eight Keys to a Successful Customer-Supplier Relationship
• **OPTIONS:** - The contract must ensure that the customer is never without options in dealing with the supplier. This is critical to a healthy, balanced and successful working relationship.
• "**NO SURPRISES:**" - The contract must require advance customer approval of changes that could increase the planned charges, adversely impact the Services, increase the customer's total cost of receiving the Services, etc



Eight Keys to a Successful Customer-Supplier Relationship

- **CONTROL:** In the contract, the customer must retain sufficient control to ensure that the function continues to effectively meet your ever changing needs and objectives
- **COMPETITION**: The contract must ensure that competitive leverage is not lost after contract signing
- **VISIBILITY:** To effectively manage the relationship, the customer must have visibility into all aspects of the supplier's performance



Eight Keys to a Successful Customer-Supplier Relationship

- **GOVERNANCE/ESCALATION**: - The contract must provide an effective mechanism to manage the relationship, resolve disputes, escalate problems and retain the attention or senior supplier management
- This is especially important in a multi-vendor environment, given the need to manage the touch points and avoid finger pointing

Manage Change/Retain Leverage

- Right to use third parties or in-source -- existing and new services
- Mandatory use of customer as reference
- Termination for convenience or change of control, without punitive termination charges
- Broad customer rights to terminate for cause
- Partial termination for convenience or cause
- Exit rights/Termination Assistance

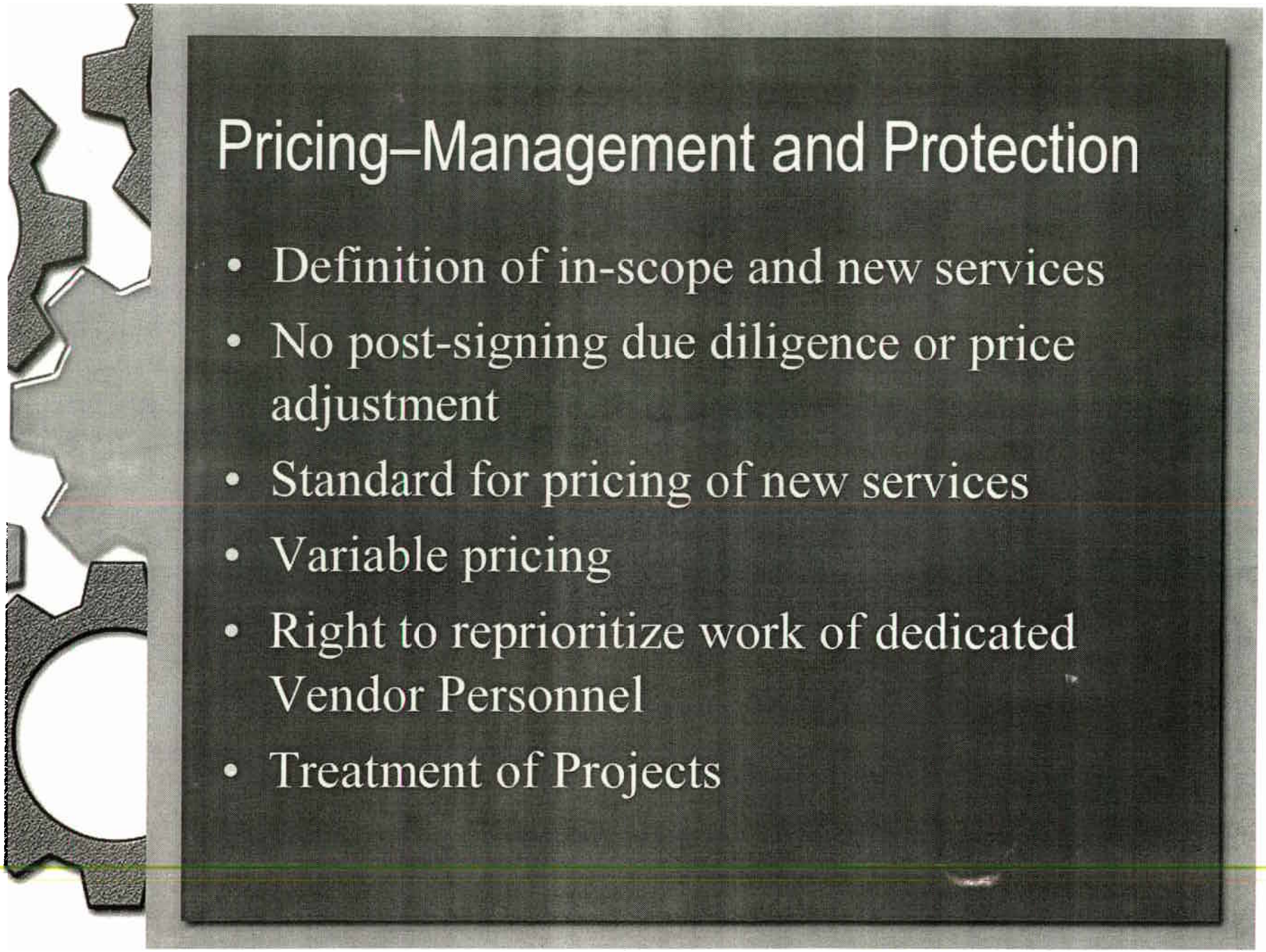
Manage Change/Retain Leverage

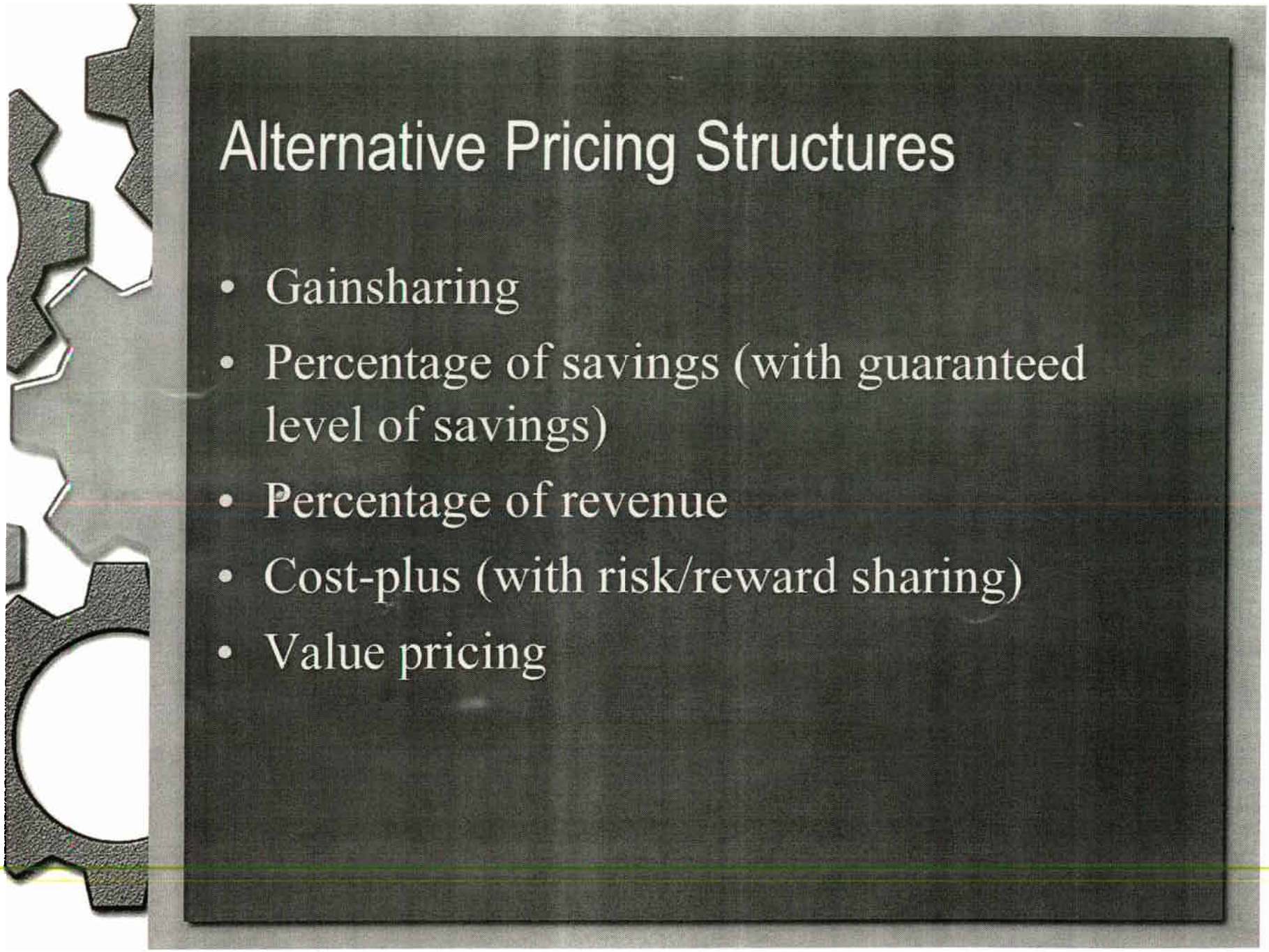
- Vendor right to terminate only for failure to pay
- Control of architecture and standards
- Approval/removal/incentive compensation of key vendor employees
- Approval/removal of Subcontractors
- Approval of Service Locations
- Broad Audit rights
- Right to withhold disputed charges
- Dispute resolution process

Management of Service and New Services – No "Nickel/Diming"

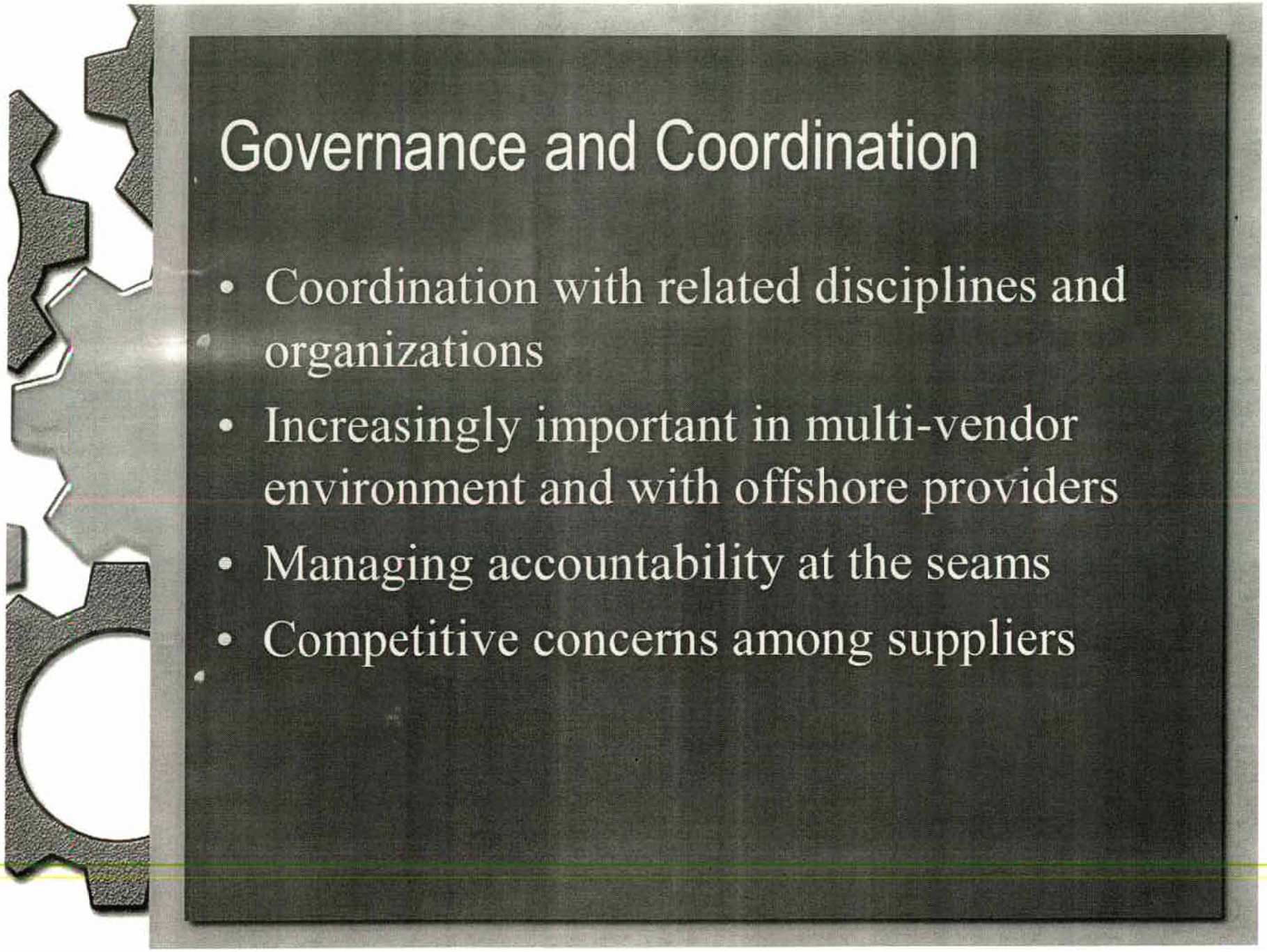
- Definition of Services –SOW plus:
  - Services performed by displaced customer employees
  - Services, etc. in customer base case
  - Inherent, necessary or customary services
- Definition of New Services --
  - Materially different service/significant change
  - Requested and/or approved by customer
  - Requiring materially different level of effort, resource or expense
  - Not covered by Resource Baseline or pricing methodology

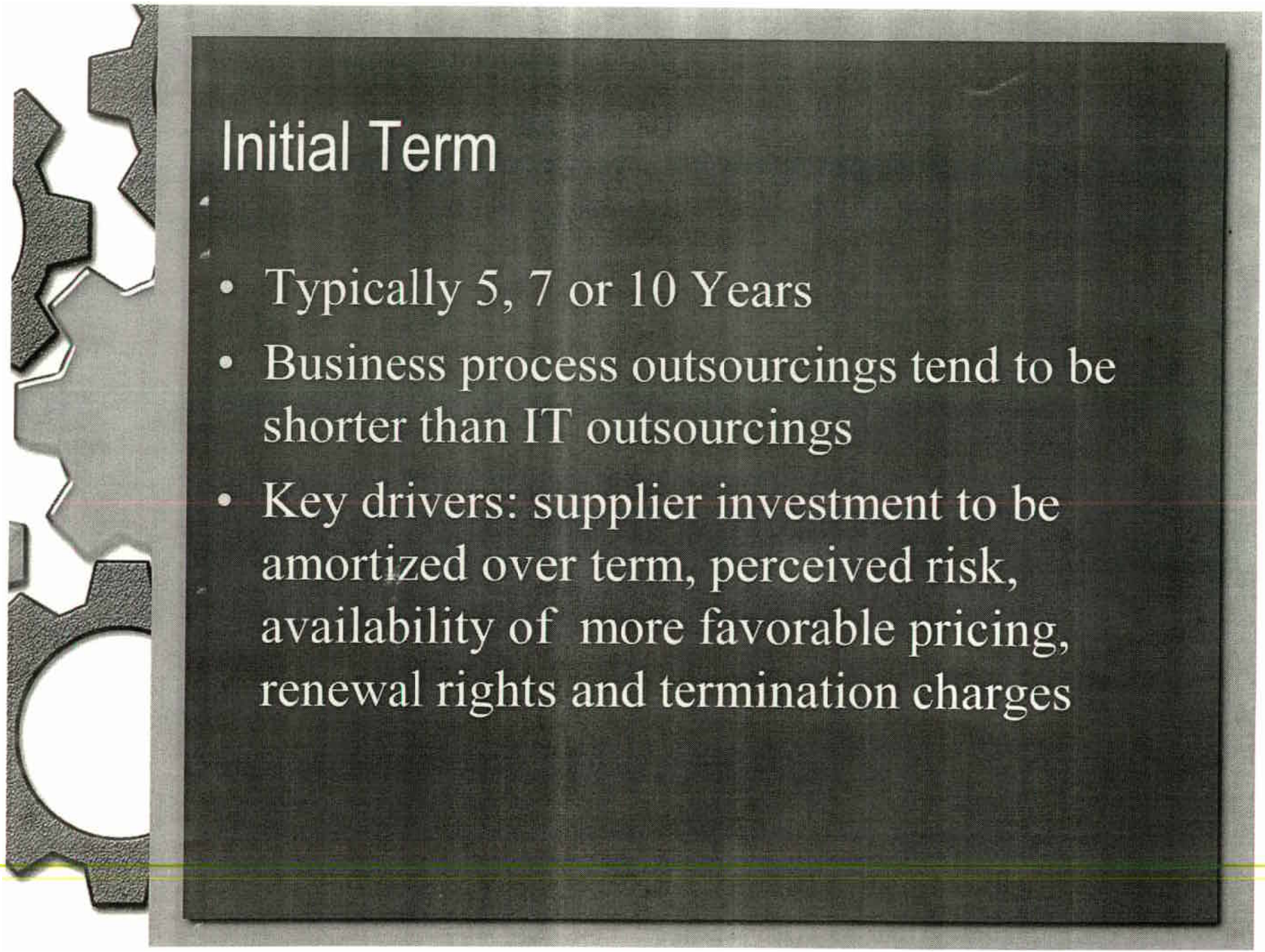

Management of Service Quality
• Service levels and service level credits
• Earnback / bonus
• Right to add, modify and delete
• Periodic reviews of service levels and vendor performance
• Root cause analysis
• Continuous improvement
• Customer satisfaction surveys
• Termination rights tied to performance

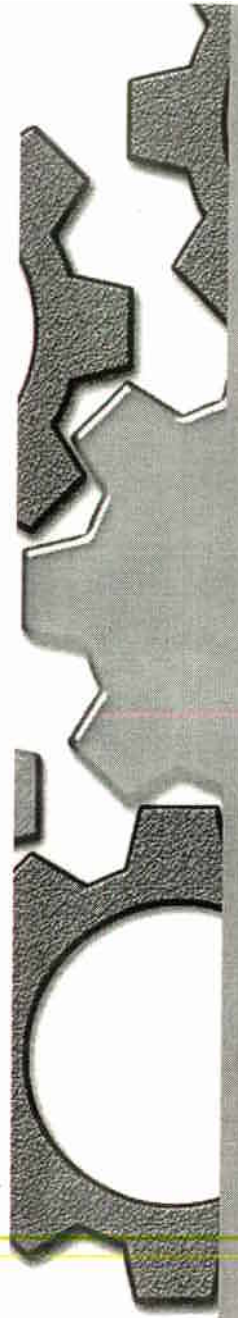

Pricing–Management and Protection
• Definition of in-scope and new services
• No post-signing due diligence or price adjustment
• Standard for pricing of new services
• Variable pricing
• Right to reprioritize work of dedicated Vendor Personnel
• Treatment of Projects


Alternative Pricing Structures
• Gainsharing
• Percentage of savings (with guaranteed level of savings)
• Percentage of revenue
• Cost-plus (with risk/reward sharing)
• Value pricing


Pricing–Management and Protection
• Right to in-source or use third parties for in-scope and new services
• Benchmarking
• Specialized benchmarking
• Most favored customer
• Extraordinary events


Governance and Coordination
• Coordination with related disciplines and organizations
• Increasingly important in multi-vendor environment and with offshore providers
• Managing accountability at the seams
• Competitive concerns among suppliers


Initial Term
• Typically 5, 7 or 10 Years
• Business process outsourcings tend to be shorter than IT outsourcings
• Key drivers: supplier investment to be amortized over term, perceived risk, availability of more favorable pricing, renewal rights and termination charges



Exit Rights

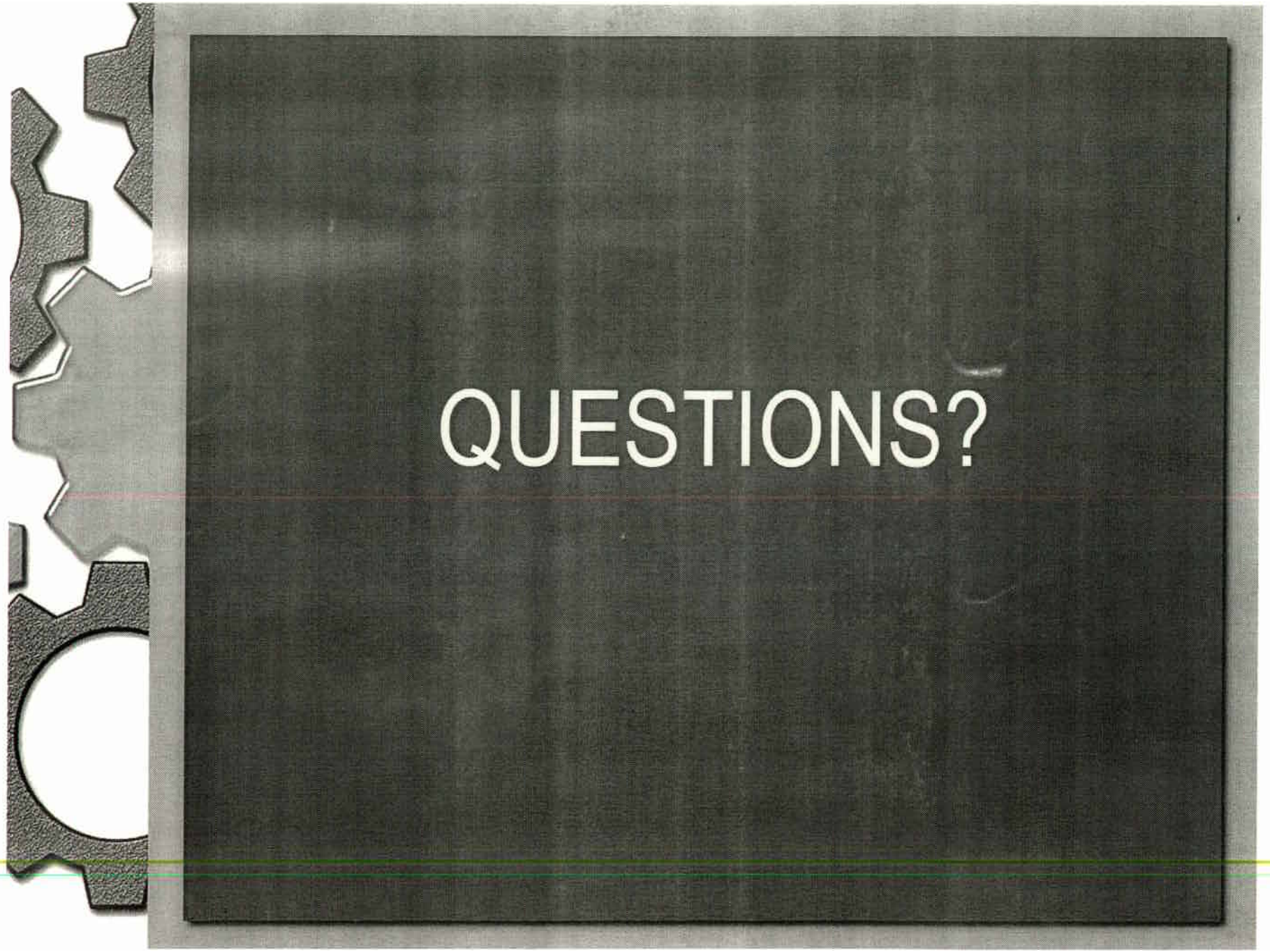
- Right to continue Services for up to 12-18 months on same terms, including pricing and service levels
- Right to hire vendor employees
- Right, but not obligation, to purchase substantially dedicated equipment
- Right, but not obligation, to software and third party contracts, unless exception agreed to in advance

Limitations of Liability

- Exclusion of consequential damages
- Liability cap – typically 12 months, but up to 24 months, trailing revenue
- Exceptions to liability cap and consequential damages exclusion, e.g.:
  - Gross negligence, willful misconduct or fraud
  - Indemnification claims
  - Refusal to perform
  - Breaches of representations and warranties

Limitations of Liability

- Items not considered damages (e.g., service level credits, deliverable credits, invoiced charges, withheld charges)
- Acknowledged direct damages (e.g., cover damages, cost of re-procurement, government fines/penalties)
- Right to terminate if liability exceeds 80-90% of cap and supplier refuses to waive and/or refresh cap


QUESTIONS?

Headquarters U.S. Air Force

Integrity - Service - Excellence

Services Acquisition Reform Act Acquisition Advisory Panel Presentation

Mr. Ronald A. Poussard
Air Force Program Executive Officer
for Combat & Mission Support

27 September 2005

U.S. AIR FORCE

AFPEO/CM
Mission Statement

Lead the Acquisition of Combat and Mission Support Services for the Air Force

Acquisition Success Every Time

AFPEO/CM
Organization Stand-up

- Office established in Feb 2002
- AF Response to FY 02 National Defense Authorization Act (NDAA)
  - First service to implement Public Law by establishing PEO
  - AFPEO issued interim Management and Oversight of Acquisition of Services Process (MOASP), Apr 2002
  - OSD approved MOASP, 07 Feb 2003

The Law

- FY 2002 National Defense Authorization Act requires
  - A management structure for procurement of services comparable to the structure for procurement of products
  - A designated official to be responsible for management of the procurement of services
  - The SECDEF to establish a dollar threshold and other criteria for the approval of service contracts
  - The SECDEF to issue and implement a policy consistent with this section within 180 days of enactment

U.S. AIR FORCE

MOASP Covered Services

OSD	Efforts > $2B Special Interest
AFAE (Delegated to AFPEO)	Efforts > $500M Special Interest
AFPEO	PEO Designated Weapon System Other Service Efforts > $100M A-76 Studies = or > 300 FTE Special Interest
MAJCOM	Efforts > $100K

U.S. AIR FORCE

AFPEO/CM
Areas of Responsibility

- Acquisition authority for services
- Designated official for performance-based acquisition
- Portfolio management
  - Pre-award review/approval/direction
    - ASP Chair and source selection authority
  - Post-award review/analysis
  - Strategic leadership across the AF
- Policy input/legal coordination
- Customer interface—MAJCOMs and installations
- OSD interface
- Training and outreach

U.S. AIR FORCE

AFPEO/CM Portfolio

	#Programs	Est $B
■ Sustainment & Mission Support Services	39	31
■ A&AS	21	11
■ IT Operations and Services	12	15
■ Base Operations Support	11	3
■ A-76 Public/Private	9	1
■ Training Support & Services	8	20
■ Range Operations & Maintenance	7	2
■ Other	7	2
■ Operations or Base Level Maintenance	6	1
■ R&D	6	2
■ Service Wide Initiatives	6	5
■ General Support Services	5	6
■ Contingency Operations	2	10
Total	139	109

U.S. AIR FORCE

AFPEO/CM
Top Ten Post Award

■ Network Centric Sol (NETCENTS), multi award	$9B
■ Operation & Support of Arnold AFB, Aerospace Testing Alliance	$3B
■ Thule Base Maint, Greenland Contractors	$951M
■ Global Eng & Tech Assist (GEITA 5), multi	$850M
■ Command, Control, Communications, Computer, Intelligence, IT, Surveillance & Reconnaissance (C4I2TSR), multi	$800M
■ Contract A&AS & Tech Assist (CAASETA), multi	$610M
■ AF Pentagon Communications Agency, Lockheed M	$600M
■ Maint Repair Overhaul (MRO), Battelle	$500M
■ Western Range Ops, InDyne	$439M
■ C-20 Contractor Log Support (CLS), M-7Aerospace	$402M

U.S. AIR FORCE

AFPEO/CM
Top Ten Pre-Award

■ AF Contract Augmentation Program	$10B
■ KC-135 PDM	$5B
■ F-117 Total System Support	$4B
■ Security Forces Gate Guards	$3B
■ Civil Reserve Air Fleet	$2B
■ Secondary Power Logistics Solution	$2B
■ Professional Acq Support Services	$1B
■ DPM Transformation	$1B
■ Parts & Repair Ordering System (PROS III)	$1B
■ SMC A&AS	$845M

AFPEO/CM
FY05 Awards

Program	Customer	Est Value $M
AFOTEC Advisory & Assistance Service	Kirtland	500
Columbus AFB Aircraft Maintenance II	Columbus	230
Contract Advisory & Assistance Services & Engineering Technical Assistance	Peterson	2440
Eareckson BOS	Eareckson	360
Global Engineering Integration & Technical Assistance (GEITA 5)	Brooks	850
Launch Operations Support Contract (LOSC) (2005-2015)	Patrick	335
Operation and Maintenance of the Eglin Test Complex	Eglin	725
Technical Acquisition and Management Support (TAMS III)	Eglin	150
Thule Base Maintenance Contract (BMC) (FY06-15)	Thule	951
World Wide Express	Multi	355
C-21 CLS	Tinker	354

AFPEO/CM
Other Pre-Award

- OMBC A-76 Cost Comparisons >300 FTEs
  - Keesler BOS
  - Sheppard BOS
  - Nellis Aircraft Maintenance
  - Wright Patterson Civil Engineering

U.S. AIR FORCE

Current Environment

- Ethics and Integrity in decision making
  - Need for process oversight--checks and balances
- Increasing role of OSD
- FY 06 legislative proposal to centralize acquisition of services
- Increasing consolidation of requirements
- Congressional concern over IDIQ contracts, bundling, contract length
- DOD vs. non-DoD contracts
- Program management and quality assurance training
- Incentives for performance-based requirements

U.S. AIR FORCE

Considerations

- Services Acquisition Program Mgt training/career field
- SB Set-Asides under Section 803 Fair Opportunity MACs
- Re-certification of size status after proposals under MACs
- Obligation of minimum quantity funds at time of multiple award IDIQ award
- Rule of 2 – Application to MACs?

U.S. AIR FORCE

Summary

- Acquisition of services represents a significant portion of the AF budget
- Annual legislative & OSD direction for services acquisition is a certainty
- Customer training/education essential to success

TESTIMONY OF TRAVERSE BAY MANUFACTURING FOR ACQUISITION ADVISORY PANEL

Traverse Bay Manufacturing, Inc. a family-owned business located in Northern Michigan was established in 1991. We have specialized in product development and apparel manufacturing services since 1994 and we are one of the few garment-manufacturing companies left in the United States. Our client base consisted of retailers such as L.L. Bean, Cabela's, Patagonia and Land's End. However, after the September 11 terrorist attacks our company suffered a severe decline in business. This, coupled with the competition of offshore labor costs, motivated us to search for other business opportunities and we eventually began assisting Peckham Industries with government contracts.

We became aware of Peckham Industries through Malden Mills our fabric supplier. Peckham was looking for a company to provide additional sewing capacity and we had experience sewing with the types of fabrics they were using to make their garments. In the fall of 2001, we began working with Peckham Industries, a CRP affiliated with NISH, building garments for the SPEAR Layering System that Peckham had a government contract to build.

By the fall of 2003, Traverse Bay Manufacturing was producing 12,000 sets per month of silkweight underwear tops and bottoms for Peckham Industries to assist them in fulfilling a government contract. In December 2003 Peckham's contract with the government had been extended to the end of 2006 and we were asked to increase our production volume to 20,000 sets of silkweight underwear per month. In January 2005, Peckham again asked us to increase our production to 50,000 sets per month. All of these increases were due to RFI (Rapid Fielding Initiative) requirements. Peckham Industries informed us that if we were not able to fulfill these volumes they would find another supplier.

In order to meet these requirements, and ultimately stay in business, Traverse Bay Manufacturing was compelled to hire more employees and purchase the capital equipment necessary for the job. In April of 2005, we had nearly 100 employees and were meeting Peckham's requirement of 50,000 sets per month. Due to the focus, attention and capacity required to meet this demand, Traverse Bay Manufacturing was unable to cultivate other business.

In May 2005, Peckham informed Traverse Bay Manufacturing that due to NISH regulations, we could no longer supply these garments and that our assistance on this specific contract would cease at the end of September

2005 although Peckham would continue to hold the government contract until May of 2006. Our assistance on this contract employs nearly 100 and provides employment opportunities in a HUB Zone area. Losing this work seriously jeopardizes the employment of these people.

Our goal throughout our relationship with Peckham Industries was and continues to become the prime on government contracts; however, there are two main barriers for us to overcome:

1. JWOD Procurement Process

Due to the JWOD (Javits, Wagner, ODay) Act, very few large apparel contracts ever make it to small business set-asides. JWOD has the power to pre-select the items on their procurement list that they feel they are capable of building. Therefore many large procurements are "picked over" before a pre-solicitation is generated and never make it down to the small business level. This effectively bans small business from government contracting for apparel. It is a well-known fact that the clothing manufacturing industry is perishing due to offshore labor rates and government apparel contracting is one of the few options available to small business garment manufacturers.

2. The ability for Small Business to assist with JWOD contracts

Currently it is extremely difficult, if not impossible, for small businesses to assist with JWOD/NISH contracts due to their internal regulations regarding percentage of handicap participation in the contract and the requirement that the status of the company that assists has to be a non-profit community rehabilitation program.

We would like to propose the following recommendations to lessen or eliminate these barriers:

1. Review the JWOD procurement process to make sure set-asides that are taken can actually be accomplished by their own internal regulations of a mix of 75%/25% disabled to non-disabled employees per contract and still be cost effective for the government. An independent committee that could make the discernment would do this.

2. Since the apparel industry itself should be classified as disadvantaged; adjust the percentage of required set-asides to allow more procurement to reach the small business level for apparel. The size of the procurements should also be taken into consideration.

3. Changes need to be made to allow easier small business participation in contracts awarded under JWOD. If a company that is awarded a JWOD contract deems it necessary to obtain assistance from small business in order to meet delivery requirements and the government still receives the best value and quality for the item, this assistance should be allowed.

In summary, in order for apparel manufacturers classified as small businesses to survive; the process of determining solicitation set-asides desperately needs to be evaluated in order to provide more bidding opportunities. Additionally, the barriers for small business assistance with contracts awarded to JWOD/NISH need to be removed or made easier to overcome.